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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 251

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

SEAMPRUFE, INC. (HOLDENVILLE PLANT)

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 21, 1955

CERTIORARI GRANTED OCTOBER 10, 1955

United States Court of Appeals

TENTH CIRCUIT.

No. 4996.

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

VS.

SEAMPRUFE, INC. (Holdenville Plant), RESPONDENT.

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD.

FILED OCTOBER 16, 1954.

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(1)

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 4996

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

vs.

SEAMPRUFE, INC. (Holdenville Plant), RESPONDENT.

Petition for Enforcement of an Order of
The National Labor Relations Board.

To the Honorable, the Judges of the United States Court
of Appeals for the Tenth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, Secs. 141, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Seamprufe, Inc. (Holdenville plant), Holdenville, Oklahoma, its officers, agents, successors and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Seamprufe, Inc. (Holdenville Plant) and International Ladies' Garment Workers Union, AFL," Case No. 16-CA-677.

In support of this petition the Board respectfully shows:

(1) Respondent is a New York corporation engaged in business in the State of Oklahoma, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on July 7, 1954, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, agents, successors and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof

The Board erred in not sustaining and giving effect to each of Respondent's Exceptions to said Intermediate Report.

Wherefore, Respondent prays this Honorable Court that it review the order sought to be enforced herein and the record upon which it is predicated and upon such review that said order be set aside and enforcement thereof be denied.

SEAMPRUFE, INC.,

By HAROLD E. MUELLER,

Its Attorney.

S. LESTER BLOCK,

PROSKAUER, ROSE, GOETZ & MENDELSON,

HAROLD E. MUELLER,

KARL H. MUELLER,

Attorneys for Respondent.

Filed October 8, 1954.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Sixteenth Region

In the Matter of Seamprufe, Inc. (Holdenville Plant), and
International Ladies' Garment Workers' Union, AFL. Case
No. 16-CA-677.

Charge Against Employer

General Counsel's Exhibit 1-A

Date Filed 9-17-53

Compliance Status Checked By: MS.

1. Employer Against Whom Charge is Brought.

Name of Employer: Seamprufe, Incorporated.

Address of Establishment (Street and number, city, zone, and State): Holdenville, Oklahoma.

Number of Workers Employed: Approx. 300.

Nature of Employer's Business: Manufacturing lingerie.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.): On or about July 23, 1953 and at all times since that date, employer, by its officers, agents and employees, has refused to permit distribution of literature by representatives of the International Ladies' Garment Workers' Union at or near the entrance to its Holdenville factory, adjacent to or near a road and a parking lot, and has refused to permit such representatives, or any union representatives, to enter upon any portion of a tract approximately twenty acres in size on which said factory is located. By such acts and conduct; and by other acts and conduct, employer has interfered with, re-

strained, and coerced its employees, in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge: International Ladies' Garment Workers' Union, AFL.

4. Address (Street and number, city, zone, and State): 1710 Broadway, New York, New York. Telephone No. Columbus 5-7000.

5. Full Name of National or International Labor Organization of Which It is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization):

6. Address of National or International, if any (Street and number, city, zone, and State): Please notify: Mullinax & Wells, 1716 Jackson Street, Dallas, Texas. Telephone No.: Riverside 9051.

7. Declaration.

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

INTERNATIONAL LADIES' GARMENT WORKERS
UNION,

By MULLINAX & WELLS,

Per CHARLES J. MORRIS, Attorney.

September 16, 1953.

Complaint.

General Counsel's Exhibit 1-D.

It having been charged by International Ladies' Garment Workers' Union, AFL, 1710 Broadway, New York, New York, under date of September 17, 1953, that Seamprufe, Inc., Holdenville, Oklahoma, hereinafter referred to as Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the Labor Management Relations Act, 61 Stat. 161, hereinafter referred to as the Act, the General Counsel for the National Labor Relations Board, hereinafter re-

NATIONAL LABOR RELATIONS BOARD VS. SEAMPRUFE, INC.

ferred to as the Board, by the Regional Director for the Sixteenth Region of the Board, hereby alleges as follows:

1. Respondent is and has been since December 20, 1946, a corporation duly organized under and existing by virtue of the laws of the State of New York, having its principal office and place of business at 148 Madison Avenue in the City of New York, New York, with a manufacturing plant located at Holdenville, Oklahoma, the facility herein involved and hereinafter referred to as the "Holdenville Plant," where it is engaged in the manufacture of ladies' lingerie and related products.

2. Respondent in the course and conduct of its business operations at its "Holdenville Plant," during the twelve-month period ending November 30, 1953, which period is representative of all times material hereto, purchased raw materials, consisting principally of piece goods valued in excess of \$200,000.00, of which more than ninety per cent was shipped in interstate commerce to the "Holdenville Plant," from points outside the State of Oklahoma. During the same period, Respondent sold products consisting principally of lingerie, valued in excess of \$250,000.00, of which more than ninety per cent was shipped in interstate commerce from its "Holdenville Plant," to points outside the State of Oklahoma.

3. Copy of the charge hereinabove referred to was served on Respondent by registered mail on September 18, 1953.

4. International Ladies' Garment Workers' Union, AFL, hereinafter referred to as the Union, is a labor organization within the meaning of Section 2, subsection (5), of the Act.

5. From on or about March 17, 1953, until the present time, Respondent by and through Robert Nichols, its Plant Manager, maintained, publicized and enforced and is now maintaining, publicizing and enforcing plant rules, which inter alia prohibit the distribution of Union literature by union officials in and around Respondent's parking lot and on or about Respondent's sidewalk lying between Respondent's parking lot and the Employees' entrance of the "Holdenville Plant."

6. From on or about March 17, 1953, until the present

time, Respondent by and through Robert Nichols, its plant manager, maintained, publicized and enforced and is now maintaining, publicizing and enforcing plant rules which inter alia prohibit solicitation of Union memberships and/or authorizations by union officials in and around Respondent's parking lot and on or about Respondent's sidewalk lying between Respondent's parking lot and the Employees' entrance of the "Holdenville Plant."

7. On or about August 27, September 25 and September 30, 1953, Respondent, by and through Robert Nichols, its plant manager, attempted to prevent Union officials from distributing Union literature and/or soliciting Union memberships and/or authorizations in and around Respondent's parking lot and on and about Respondent's sidewalk lying between Respondent's parking lot and the employees' entrance of the Holdenville Plant.

8. On or about July 2, July 23 and August 27, 1953, Respondent, by and through Earl Dean, its watchman, attempted to prevent Union officials from distributing Union literature and/or soliciting Union memberships and/or authorizations in and around Respondent's parking lot and on and about Respondent's sidewalk lying between Respondent's parking lot and the employees' entrance of the Holdenville Plant.

9. On or about July 2, 1953, Respondent, by and through Velma Buirman, its supervisor, attempted to prevent Union officials from distributing Union literature and/or soliciting Union memberships and/or authorizations in and around Respondent's parking lot and on and about Respondent's sidewalk lying between Respondent's parking lot and the employees' entrance of the Holdenville Plant.

10. On or about July 23, 1953, and August 27, 1953, Respondent, by and through Robert Nichols, its plant manager, and Earl Dean, its watchman, caused the arrest of Union officials who were distributing Union literature in and around Respondent's parking lot and on and about Respondent's sidewalk, lying between Respondent's parking lot and the Employees' entrance of the Respondent's plant.

11. By the acts described above in paragraphs 5, 6, 7, 8, 9 and 10, and by each of said acts, Respondent did in-

terfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8 (a), Sub-section (1), of the Act.

12. The activities of Respondent, described above in paragraphs 5, 6, 7, 8, 9 and 10, occurring in connection with the operations of Respondent, described above in paragraphs 1 and 2 have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

13. The acts of Respondent, described above, constitute unfair labor practices affecting commerce within the meaning of section 8 (a), subsection (1), and Section 2, subsections (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board has caused this complaint to be signed and issued by the Regional Director for the Sixteenth Region, on the 31st day of December, 1953, against Seamprufe, Inc., Respondent herein.

EDWIN A. ELLIOTT,
Regional Director,
National Labor Relations Board,
Sixteenth Region.

(Seal)

Respondent's Answer:

General Counsel's Exhibit 1-F.

Now Comes Seamprufe, Inc., Respondent in the above entitled and numbered proceeding, and in answer to the complaint herein dated the 31st day of December, 1953, states:

1.

Respondent admits the allegations set forth in Paragraphs numbered 1, 2, 3, and 4 of said Complaint.

Respondent denies the allegations set forth and contained in Paragraphs numbered 5, 6, 7, 8, 9, 10, 11, 12, and 13 of said Complaint.

Wherefore, Respondent prays that said Complaint be dismissed and that it go forth without day.

SEAMPRUFE, INC.

By HAROLD E. MUELLER,

Attorney,

National Labor Relations Board.

[Verified.]

Intermediate Report and Recommended Order.

Statement of the Case.

This proceeding, brought under Section 10 (b) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act, was heard pursuant to due notice at Holdenville, Oklahoma, before Henry S. Sahm, the undersigned Trial Examiner. The complaint issued on December 31, 1953, by the General Counsel of the National Labor Relations Board, and based on charges duly filed and served, alleges that the enforcement by Seamprufe, Inc., herein-after called both Respondent and the Company, of a rule which, among other things, prohibits distribution of union literature and solicitation of union membership by representatives of the International Ladies' Garment Workers' Union, AFL, herein called the Union, in and around Respondent's parking lot of the Holdenville Plant constitutes a violation of Section 8 (a) (1) of the Act. Respondent filed an answer admitting the jurisdictional allegations of the complaint but denied that it had committed any of the unfair labor practices alleged in the complaint.¹

All parties were represented at the hearing by counsel and were afforded full opportunity to be heard, to examine, and cross-examine witnesses, to introduce relevant evidence,

¹No issue was presented or tried with respect to the exclusion of union representatives from Respondent's property on a discriminatory basis.

to argue orally, and to file briefs and proposed findings of fact and conclusions of law. The Respondent offered no testimony. Briefs have been filed by the General Counsel and the Respondent.²

Upon the entire record in the case, and from his observation of the demeanor of the witnesses, the Trial Examiner makes the following:

I. Findings of Fact.

It is conceded and found that the Union is a labor organization within the meaning of Section 2 (5) of the Act. It is conceded also that the Respondent employs approximately 200 employees at its Holdenville, Oklahoma, plant where it is engaged in the manufacture, sale, and distribution of lingerie. During the year 1953, Respondent purchased raw materials exceeding \$200,000 in value, of which more than 90 per cent was shipped in interstate commerce to its Holdenville plant from points outside the State of Oklahoma. During the same period, Respondent sold products valued in excess of \$250,000, of which more than 90 per cent was shipped in interstate commerce from its Holdenville plant to points outside the State of Oklahoma. Respondent admits, and it is found that the Respondent is engaged in commerce within the meaning of the Act.

A. The Issue.

The only issue in this case is the asserted right of a union which does not represent the employees in a plant, to distribute union literature, outside of working hours, not in the functional part of the plant itself but solely on and about an adjacent parking lot maintained for the employees. What makes this novel is the fact that the union solicitors are not employees of the Respondent. Nor is there any evidence that any of the Respondent's employees were members of the charging union. The Respondent contends that there is a distinction between a situation in which prohibition of union activities on an employer's premises is directed against employees, and a situation in which it is directed against union representatives who are not em-

²The record does not show General Counsel's Exhibit No. 4 was received in evidence. It is hereby admitted.

ployees and have no right to be on the employer's premises by virtue of their employment.³

II. The alleged unfair labor practices.

A. The Facts.

Respondent's plant is built on a 25-acre tract of land located on the outskirts of Holdenville, Oklahoma, a town of approximately 6,000 people. It operates on a one-shift basis and employs approximately 200 employees of which two-thirds reside in Holdenville, the remaining one-third residing in communities within five to ten miles around Holdenville, with a few of the employees living as far as thirty miles from the plant. The employees, none of whom appear to be represented by any union for purposes of collective bargaining, ride to work in privately owned automobiles either singly or in groups.

The plant property is bounded on the East by a public road, which runs along the front of the property. The building that houses the factory, cafeteria and offices faces in an Easterly direction. This East side of the property is bounded by a fence. Access to the front entrance to the building is from the public roadway along the East side of the property. The property is bounded on the South by a public thoroughfare called the Airport Road. Access to the rear or West entrance, which is normally used by production workers (as distinguished from officials and office personnel who use the East or front entrance) is from a private road on the West side of the Respondent's property. This private road⁴ runs in a Northerly direction from the public road (hereinafter referred to as the Airport Road); on the South side of the property and West of Respondent's building to a point Northwest of the plant building where it turns East and continues to and joins the public road near the Northeast corner of the property.

³A facet of this situation is where employees both work and live on company property. In such cases, a certified union representative is allowed to enter upon the premises for the purposes of engaging in proper union activities.

N.L.R.B. v. Stowe Spinning Co., 336 U. S. 226.

N.L.R.B. v. Lake Superior Lumber Corp., 167 F. 2d 147 (C. A. 6).

N.L.R.B. v. Cities Service Oil Co., 122 F. 2d 149.

⁴This private road, which is graveled, is entirely on Respondent's property.

The employee's parking lot is situated on Respondent's property adjacent to the private road directly behind and West of the Respondent's plant. The parking lot and sidewalk referred to hereinafter as the situs of where the union representatives distributed their literature are on Respondent's property and are some distance North of the Airport Road which runs along the South side of the property.

Employees coming to work drive in a Westerly direction along the Airport Road on the South side of the property, turn right into the private road on the West side, proceed North and then park their cars in the parking area adjacent to the rear or West entrance of the plant. After their automobiles are parked, the employees walk East from the parking lot across the private road on to a sidewalk and enter the plant.⁵ On leaving the plant at 4:30 p.m., the employees leave the parking area by driving North on the private road to a point where this road turns East and then proceed on this private road along the North side of the plant premises to where the private road intersects the public road running along the East side of Respondent's property.⁶ The automobiles then proceed in a Southerly direction on this public road to where it intersects the Airport Road at the Southeast corner of the plant property at which point they turn left in an Easterly direction toward the center of Holdenville.

Traffic on the public roads adjoining the plant is light because the plant is located in a rural or semirural area. As automobiles approach the plant in the morning when the employees report for work, they normally do not stop at any point in the vicinity of the plant until they park their cars on the Respondent's lot. When leaving at 4:30 p.m., the automobiles normally do not stop from the time they leave the parking lot until they leave the vicinity of the plant area. It was testified that about 4:30 p.m., on January 29, 1954, 80 cars containing 225 employees, left the

⁵The union representatives distributed literature to the employees on the parking lot and in the vicinity of where the sidewalk adjoins the private road.

⁶Signs posted on the property direct all traffic on the private road to proceed in one direction; namely, North from the Airport Road and then East where the private road runs along the North side of the plant property.

plant's parking lot, driving at maximum distance from each other of approximately one car-length and at speeds varying from five to twenty miles per hour. From the time they began to leave the parking lot, in this caravan fashion, until all eighty cars left the vicinity of the plant consumed approximately ten minutes and they did not stop anywhere in the vicinity of the plant area. The record warrants the finding that this nonstop method of driving to and from the plant area is the normal manner in which the employees invariably arrived at the plant area in the morning and departed in the evening. It is found, therefore, that the difficulty of reaching prospective union members and distributing union literature to employees off of Respondent's property is virtually impossible because of the special circumstances above described.

Sometime subsequent to July 2, 1953, and prior to January 29, 1954, Respondent posted "No Trespassing" signs at the Southeast corner of its property and near the points at which the private road intersects with the public roads on the South and East sides of the property. There are also "Private Road" signs at the latter two points which also were posted on Respondent's premises sometime between July 2, 1953, and January 29, 1954.

As stated above, the sole issue in this case is the Union's asserted right to use the parking lot and the adjoining sidewalk outside the West or rear entrance of the factory building to distribute union literature and solicit union memberships.

Sona Williams, a representative of the charging union, drove to Respondent's property on three occasions in the fall of 1952, and again on March 5, 1953. On these four occasions, she parked her car on Respondent's lot, walked a short distance to a point approximately where the private road on the West side of the plant intersects the parking area and the sidewalk leading to the employees' entrance and then proceeded to distribute union literature to Respondent's employees who were reporting for work.

On the last occasion, March 5, 1953, and while accompanied by Irving Krantz, another union representative, the manager of Respondent's plant, Robert Nichols, came out

of the factory, and told them, "You are trespassing on company property and you must leave now." After some further conversation, Nichols continued, "You heard what I said, leave now." Krantz then replied, that he did not know they were on company property and that he would check and see if this were so, whereupon Nichols replied, "Are you going now or shall I call the cops?" Whereupon, Williams and Krantz departed reluctantly.

Georgia Sukenis, also a representative of the charging union, first went upon the Respondent's property in February of 1953,⁷ at which time she stationed herself in the vicinity of the parking lot, at a point near the sidewalk, equidistant from the parking lot and the employees' entrance. At that time and place she handed employees union literature as they left their parked cars and proceeded to enter the plant. The next time she stationed herself at the place described above was on May 27, 1953. On that occasion she did not distribute union literature but merely greeted the employees as they entered Respondent's plant.

She returned to the plant on July 2, 1953, parked her car in the parking area and distributed union literature to the employees as they left their parked automobiles and walked toward the employees' entrance. As she was distributing this literature, Earl Dean, the plant watchman, approached her and said: "I'm sorry but the company doesn't allow no leaflets to be handed out and you have to leave here." Sukenis agreed to leave and did so.

On July 23, 1953, Sukenis, accompanied by Union Representative Krantz, returned to Respondent's property. As

⁷The charge in this case was filed on September 17, 1953. Therefore, the proceedings herein, insofar as considering alleged unfair labor practices, are limited to such alleged practices occurring on and after March 17, 1953. Section 10 (b) of the Act. The Respondent contended at the hearing that evidence relating to events occurring prior to March 17, 1953, was inadmissible. Respondent's objection was overruled on the ground that such evidence would be received and considered only as background. "To the extent that the Respondent's activity in connection with the committee occurred more than 6 months before the filing and service of the original charge, Section 10 (b) of the Act prevents such activity from being utilized as a basis for an unfair labor practice finding. However, such conduct may be, and has been, considered as background evidence to assist us in evaluating the Respondent's conduct which occurred after the 6-month period." McCann Steel Co., 105 NLRB No. 30, footnote 10. See also NLRB v. Sharples Chemicals Co., 33 LRRM 2438, 2444 (C.A. 6).

they parked their car on the Airport Road, and while walking to the same situs described above for the purpose of distributing union literature to those employees who were entering the plant, they noticed a police car stationed at the East or main entrance of the plant which leads to the executive offices of Respondent. After they had handed two pamphlets to employees, a policeman of the Holdenville Police Department, who had in the meantime driven the police car referred to above, around to the West or employees' entrance, apprehended Sukenis and Krantz and said, "Georgia, we have two warrants for your arrest." * * * You have violated Ordinance No. 413." Thereupon, Sukenis and Krantz were taken to the Holdenville police station.

After Sukenis and Krantz left the police station, they returned to the plant the same day, and again began to distribute union literature to the employees at a point near the employees' entrance.¹⁰ They were again arrested by a city policeman identified as Kyle, who said that he did not have warrants for them but "We are arresting you again. You have to go back." Sukenis testified that, "We went back [to the police station] and give them twenty dollars more apiece, cash."¹¹

"Sukenis' name was already on the warrant served on her but Krantz' name was inserted later on the warrant served upon him.

¹⁰This Ordinance, as herein pertinent, provides:

An ordinance defining trespass, providing the penalties therefor, and declaring an emergency:

Be it ordered by the Mayor and councilmen of the City of Holdenville, Oklahoma, in regular session assembled:

Section 1. Trespass, as used in this ordinance, shall include going upon, or occupying any public or private property or entrances thereto without the express or implied consent of the owner, lessee, or custodian.

Section 2. It shall be an offense for any person to trespass upon, or enter upon any public or private property, within the City of Holdenville, Oklahoma, against the wishes or consent of the owner, lessee, custodian, or the person rightfully in possession thereof. (Conviction is punishable by a maximum fine of \$20.)

Passed and approved, this, the 21st day of July, 1953.

¹¹On all these occasions hereinbefore described, the literature was distributed on the Respondent's property.

¹²The General Counsel moved for the admission into evidence of General Counsel's exhibit marked for identification No. 2 which is a copy of a transcript covering the trial of Sukenis and Krantz in the Municipal Court of the City of Holdenville on August 3, 1953. Respondent objected to the receipt in evidence of this exhibit and the Trial Examiner reserved ruling. This exhibit is hereby admitted

The next time Sukénis returned to Respondent's property was on August 27, 1953. At that time she merely greeted the employees as they entered the plant to go to work. She was not distributing union literature on this occasion but was again arrested by a Holdenville police officer and taken to the police station. When asked on direct examination if, after leaving the police station, she returned to the plant that same day she answered: "No, sir, I couldn't. They wouldn't let me."

The next time Sukenis was on Respondent's property was on October 1, 1953. She did not distribute any union literature at that time, but merely greeted the Respondent's employees as they entered the plant. While she was there, Nichols came out of the plant and said, "Here you are, Georgia. You are asking for trouble, and you are going to get it. Get the hell away from here." She waited "a while" and then left the Respondent's property.

She next drove to the plant on September 26, 1953, in the company of Althea Covey, another representative of the charging union. They parked their automobile on the Airport Road and proceeded to the same place on Respondent's property that the Union representatives had stationed themselves on the previous occasions described above. They had no union literature with them. Nichols, the plant manager, came out of the factory while they were standing in the vicinity of the employees' entrance and told them to leave the plant premises. They did not leave and, about ten minutes later, a Holdenville police officer who accosted them, said, "Well, I am not going to arrest you because you are not trespassing, but you have to ***."

in evidence for the limited purpose of corroborating other testimony to the effect that Respondent prevented the union representatives from distributing their literature on its property. Nashville Corporation, 94 NLRB at 1568, 1569. Oklahoma provides expressly by a statute for the admission of the official reporter's certified transcript of notes of testimony "in all cases" with like effect as testimony taken by deposition. Comp. St. 1921, Sec. 3071. Stats. 1931, Sec. 3827; S. 1921, Sec. 7324, St. 1931, Sec. 13390; Young v. Travelers Insurance Co., D. C. N. D. Okl., 2 Fed. Supp. 624 (Okl. Comp. Stat., 1921, Sec. 3071, applied to admit a court reporter's certified transcript); St. 1951, May 7, Tit. 11, c. 18, Sec. 4 (Municipal and city courts; "Such reporter shall have power to certify all transcripts and records of evidence and proceedings taken before him"). Rule 43 (a), Rules of Civil Proc. for U. S. Dist. Cts.

Althea Covey, a Union representative, accompanied Sukenis to the plant September 26, 1953; and on January 29, 1954, Covey went to the plant with Sona Williams, another Union representative. Her testimony corroborated Sukenis and Williams insofar as it pertains to what they testified occurred on those dates.

Upon a study of the evidence on the record as a whole, and based upon the reliable, probative and substantial testimony taken in the case, it is concluded and found that:

1. Respondent prevented the Union representatives from distributing union literature and soliciting union memberships on Respondent's property during the employees' non-working time, not in the plant, but in and about the parking area;
2. Access to Respondent's employees, either upon arrival at, or departure from the plant, can only be effectively accomplished on the parking lot and the sidewalk leading to the employees' entrance;
3. It is virtually impossible to distribute union literature to employees or solicit union memberships off Respondent's property;¹²
4. Respondent enforced a rule forbidding the distribution of Union literature on its property; and
5. No showing was made that the Respondent's no-solicitation rule was necessary in order to maintain production or preserve discipline in the plant.

B. Contentions, analysis, and conclusions.

An employer may lawfully forbid union solicitation on his property if such prohibition is nondiscriminatorily promulgated in good faith and in order to maintain cleanliness or production or safety or discipline in the plant and not to interfere with the employees' rights of self-organization. In fact, this can be done in the functional part of the plant, even during the employees' nonworking time, in the interest

¹²In the United Aircraft Corp., 67 NLRB 594, 606, it was found that the employees did not stop their cars to receive literature, so that "distribution to these employees is virtually impossible."

of keeping the plant clean and orderly, at least where it is not evident that such activity cannot readily be conducted somewhere off the employer's premises.¹³

The fundamental problem involved in the present case consists of the adjustment of the undisputed right of a property owner, to govern the use of its own property, and the employees' undisputed rights of self-organization and collective bargaining.¹⁴ The rights of self-organization and collective bargaining guaranteed employees by the Act include the right "to receive aid, advice, and information from others, concerning these rights and their enjoyment."¹⁵ Correlatively, the Union has the right "to discuss with and inform the employees concerning matters involved in their choice."¹⁶ Thomas v. Collins, 323 U. S. 516, 534. In some circumstances, however, employees might find it virtually impossible to exercise these rights off the employer's premises. On the other hand, if the exercise of these rights were conducted on the employer's property, not on company time, it might, at most, be merely an inconvenience to the employer. Consequently, the Supreme Court has held that where it is necessary to balance this clash of interests between the employees' rights to self-organization and inconvenience to the employer's use of his property, the employees' privilege is weighed more heavily.¹⁷ Moreover, under the facts of this case, the rights accorded to employees by Section 7 of the Act cannot be curtailed by the Ordinance supra, which was enacted by the City of Holdenville. See N.L.R.B. v. Hearst Publications, 322 U. S. 111, 123, 124; Automobile Workers v. O'Brien 339 U. S. 454, 458, 459.

While a showing by the employer that "unusual circum-

¹³N.L.R.B. v. Le Tourneau Co., 324 U. S. 793; Monolith Portland Cement Co., 94 NLRB 1358; Caldwell Furniture Co., 199 F. 2d 267 (C. A. 4), certiorari denied, 345 U. S. 907; N.L.R.B. v. American Furnace Co., 158 F. 2d 376, 380 (C. A. 7); N.L.R.B. v. Illinois Tool Works, 153 F. 2d 811, 816 (C. A. 7). As to retail department stores, see Eighteenth Annual Report of the National Labor Relations Board at page 31.

¹⁴The primary purpose of the Act is to promote collective bargaining. N.L.R.B. v. Sands Manufacturing Co., 306 U. S. 332.

¹⁵Weyerhaeuser Timber Co., 31 NLRB 258, 264.

¹⁶N.L.R.B. v. Le Tourneau Co., supra, footnote 8 at page 802. See N.L.R.B. v. Cities Service Oil Co., supra, at page 152, where the Court held that in some circumstances property rights must yield "in order to safeguard the right to collective bargaining."

"stancess" pertaining to the operation of his particular plant might override the Union's right to distribute its literature on company property, no such evidence is present in this case.¹⁷ Respondent's contention (which is contrary to the finding made above) that since the Union has adequate means of communication with its employees outside of company property, the enforcement of its no-solicitation rule does not improperly restrict the employees' rights under Section 7 of the Act is answered by the Board's holding in the Le Tourneau case, which was approved by the Supreme Court, *supra*, that "It is no answer to suggest that other means of disseminating Union literature are not foreclosed." (54 NLRB 1253, 1261.). The Court of Appeals for the Second Circuit expressly followed this principle in Bonwit Teller, Inc., v. N.L.R.B., 197 F. 2d 640, certiorari denied, 345 U. S. 905, wherein the Court said on page 645:

Normally, an employer cannot forbid union solicitation on company property during nonworking time even where there is no showing that solicitation away from the plant would be ineffective. *Republic Aviation Corp. v. N.L.R.B.*, 324 U. S. 793. This is so because the place of work has been recognized to be the most effective place for the communication of information and opinion concerning unionization.

Respondent contends, however, that the Le Tourneau case, *supra*, is not controlling because in that case employees were distributing union literature whereas here, nonemployee solicitors (Union representatives) are involved. A study of the legislative history of Section 8 (a) (1) and the cases interpreting solicitation of employees by a union on the employer's property have persuaded the Trial Examiner that this asserted distinction is one without a difference. To differentiate between employees soliciting on behalf of the Union and nonemployee union solicitors would be a differentiation not only without substance but in clear defiance of the rationale given by the Board and the Courts for permitting solicitation. This conclusion is based on the belief that the rationale enunciated by the Supreme Court in the Le Tourneau case, *supra*, is equally applicable in

¹⁷N.L.R.B. v. Le Tourneau, *supra*, at page 797.

the case of solicitation by union representatives, as well as where the solicitation is done by employees.¹⁸

Respondent's argument that to compel it to furnish the Union a place on its property for the Union's use in trying to solicit members would be to compel it to violate the provisions of the Act which prohibits such interference and contribution of support misconceives the type of situation to which this argument has reference. This principle applies only where the employer prohibits one union from conducting organizational activities on its premises while, at the same time, he permits a rival union to engage in such activities. See Carter Carburetor Corp. v. N.L.R.B., 140 F.2d 714, 716 (C. A. 8).

The Board in Livingston Shirt Corporation, 107 NLRB No. 109, in speaking of the Union's customary means for communicating with employees stated: "These [means] include individual contact with employees on the employer's premises outside working hours (absent, of course a privileged broad no-solicitation rule), solicitation while entering and leaving the premises, at their homes, and at union meetings." (Emphasis supplied.) This comment seems directly applicable here.

It is found, therefore, that the Respondent's rule prohibiting the distribution of union literature and the solicitation of union memberships in and around its parking lot and the employees' entrance, constitutes an unreasonable impediment to the freedom of communication essential to the exercise of its employees' rights of self-organization, and that Respondent's maintenance and enforcement of the rule violated Section 8 (a) (1) of the Act.¹⁹

III. The effect of the unfair labor practices upon commerce.

The activities of Respondent set forth in Section II, above, occurring in connection with its operations described

¹⁸ Respondent's citation of Maryland Drydock Co. v. N.L.R.B., 183 F.2d 538, (C. A. 4) is inapposite as there the Court held that where conduct, the natural tendency of which is to impair discipline or efficiency is found, it may be forbidden by the company where it takes place on company property.

¹⁹ N.L.R.B. v. The Monarch Machine Tool Company, 33 LRRM 2488 (C. A. 6); Carolina Mills, Inc., 92 NLRB 1141, enforced 190 F.2d 675 (C. A. 4); Remington Rand, Inc., 103 NLRB No. 25; Grand Central Aircraft Co., 103 NLRB No. 101.

in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. The remedy.

Having found that Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has prohibited the distribution of union literature on and near its parking lot during nonworking time, it will be recommended that Respondent cease and desist from the unfair labor practice found and from any like or related acts or conduct which would tend to interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed under Section 7 of the Act.

Upon the basis of the above findings of fact, and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law.

1. Respondent, Seamprufe, Inc. (Holdenville Plant), is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. International Ladies' Garment Workers' Union, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.
3. By denying the use of its parking lot and adjacent area for the distribution of union literature during the non-working time of its employees, Respondent has engaged, and is engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations.

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, it is

recommended that Respondent, Seamprufe, Inc. (Holdenville Plant), its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Enforcing its rule prohibiting the distribution of union literature on and adjacent to its parking lot during the employees' nonworking time, provided, however, that the Respondent may impose reasonable and nondiscriminatory regulations in the interest of plant efficiency and discipline but not as to deny access to union representatives for the purpose of effecting such distribution.

(b) Engaging in any like or related acts or conduct which interferes with, restrains, or coerces its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Ladies' Garment Workers' Union, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Rescind immediately its rule prohibiting the distribution of union literature upon and adjacent to its parking lot during employees' nonworking time.

(b) Post at its plant at Holdenville, Oklahoma, copies of the notice attached hereto and marked Appendix "A." Copies of said notice to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by Respondent's representatives, be posted by Respondent immediately upon receipt thereof, and maintained by ~~it~~ for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted.

(c) Notify the Regional Director for the Sixteenth Re-

gion, in writing, within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, what steps Respondent has taken to comply therewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report by Respondent it shall have notified the aforesaid Regional Director in writing that it will comply with and conform to these recommendations now made by the Trial Examiner, that the National Labor Relations Board issue an order requiring it so to do.

Dated at Washington, D. C., this 26th day of March, 1954.

HENRY S. SAHM,
Trial Examiner.

Appendix A.

Notice.

To All Employees at the Holdenville Plant Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will cease and desist from enforcing our rule prohibiting the distribution of union literature on and adjacent to our parking lot during our employees' nonworking hours.

We Will Not engage in any like or related acts or conduct which interferes with, restrains, or coerces our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Ladies' Garment Workers' Union, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organiza-

tion as a condition of employment as authorized by Section 8 (a) (3) of the Act.

We hereby rescind our rule prohibiting the distribution of union literature on and near our parking lot during nonworking hours of employees, except pursuant to reasonable controls not of such character, however, as to deny full access to union representatives for the purpose of distribution.

SEAMPRUFE, Inc., (Holdenville Plant)
(Employer)

Dated..... By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Exceptions of Respondent to Intermediate Report.

To The Said Honorable Board:

Seamprufe, Inc., Respondent, takes exceptions to the Trial Examiner's Intermediate Report as follows:

I.

The following findings, and each of them, are not supported by the record:

(1) "Traffic on the public roads adjoining the plant is light because the plant is located in a rural or semirural area." (I. R. p. 3, 1, 43-44).

(2) "As automobiles approach the plant in the morning when the employees report for work, they normally do not stop at any point in the vicinity of the plant until they park their cars on the Respondent's lot." (I. R. p. 3, 1, 44-47).

II.

The following findings and conclusions, and each of them, are not supported by and are contrary to the record:

(1) "The record warrants the finding that this nonstop method of driving to and from the plant area is the normal

manner in which the employees invariably arrived at the plant area in the morning and departed in the evening." (I. R. p. 4, 1. 5-9).

(2) "It is found, therefore, that the difficulty of reaching prospective union members and distributing union literature to employees off of Respondent's property is virtually impossible because of the special circumstances above described." (I. R. p. 4, 1. 9-12).

(3) "Sona Williams, a representative of the charging union, drove to Respondent's property on three occasions in the fall of 1952 * * *." (I. R., p. 4, 1. 27-29).

(4) "On those four occasions, she parked her car on Respondent's lot, * * * and then proceeded to distribute union literature to Respondent's employees who were reporting for work." (I. R. p. 4, 1. 29-34).

(5) "'You have violated Ordinance No. 413!'" (I. R. p. 5, 1. 29).

(6) "The next time Sukenis was on Respondent's property was on October 1, 1953." (I. R., p. 6, 1. 16-17).

(7) "They did not leave and, about ten minutes later, a Holdenville police officer who accosted them, said, * * *" (I. R. p. 6, 1. 32-33).

(8) "Access to Respondent's employees, either upon arrival at, or departure from the plant, can only be effectively accomplished on the parking lot and the sidewalk leading to the employees entrance;" (I. R. p. 7, 1. 17-20).

(9) "It is virtually impossible to distribute union literature to employees or solicit union memberships off Respondent's property;" (I. R., p. 7, 1. 22-24).

(10) "Respondent enforced a rule forbidding the distribution of union literature on its property;" (I. R., p. 7, 1. 26-27).

(11) "It is found, therefore, that the Respondent's rule prohibiting the distribution of union literature and the solicitation of union membership in and around its parking lot and the employees' entrance, constitutes an unreasonable impediment to the freedom of communication essential to

the exercise of its employees' rights of self organization, and that Respondent's maintenance and enforcement of the rule violated Section 8 (a) (1) of the Act." (I. R., p. 9, 1; 38-44).

III.

The Trial Examiner erred in not making and giving effect to the following findings and conclusions, and each of them, which are supported by the record and are material and necessary to the proper and lawful determination of issues presented herein:

- (1) Respondent posted its property against trespassing.
- (2) Respondent enforced its no-trespassing rule against all trespassers on a non-discriminatory basis.
- (3) Sukenis, Krantz, Williams and Covey were paid employees of the union at all of the times material to this proceeding and none of them was an employee of Respondent on any of the occasions in question. (Tr. 9, 21, 37, 56-57, 75-76).
- (4) Sukenis, Krantz, Williams and Covey were trespassers on Respondent's property on each of the occasions that they were directed to leave it or were removed therefrom.
- (5) Sukenis, Krantz, Williams and Covey were directed and required to leave Respondent's property on the occasions involved in pursuance of Respondent's no-trespassing rule.
- (6) The distribution of literature was not the cause of any of said union organizers being required to leave Respondent's property.
- (7) On August 27, September 26, and October 1, 1953, Sukenis was required to leave Respondent's property when she was trespassing thereon on which occasions she had no literature to distribute and there is no evidence that she was soliciting union memberships. (Tr. 51-56).
- (8) There is no evidence that Respondent had a rule prohibiting the distribution of union literature.
- (9) There is no evidence that Respondent had a rule prohibiting the solicitation of union memberships.

(10) There is no evidence that Respondent interfered with or attempted to interfere with any employee in respect to the distribution of union literature or the solicitation of union memberships.

(11) The south side of the employees' parking lot on Respondent's property which is the side thereof nearest a public road is approximately 400 feet north of the Airport Road. (G. C. Ex. #5).

(12) Sona Williams, a union organizer, testified that on the afternoon of January 29, 1954, when the employees left the plant they left in cars; that "most of the time they (the cars) were almost bumper to bumper. In cases where—sometimes they weren't so close, maybe just the length of a car; when they were so close together, some of them were going around five, five, ten mile an hour, and then where they wasn't so thick, I would say some of them were making 20, all the way from five to twenty; * * * I'd say about half of them, just about half of them were almost bumper to bumper." (Tr. 15-17, 28).

(13) Aletha Covey, a union organizer, testified that the afternoon of January 29, 1954 when the employees were leaving the plant the cars in which they were riding were "Bumper to bumper. On many occasions, * * *, as they strangled out, there would be approximately a car length between them"; and that they were traveling "From the exit, * * * about five and ten mile an hour." (Tr. 66-67).

(14) There is no evidence or testimony in the record with respect to the movement of cars when employees come to work in the morning other than the route that is ordinarily followed.

(15) It is clear from the record that the employees do not arrive at the plant in the morning at the same time or at substantially the same time.

(16) The record shows that on July 23, 1953, Sukenis and Krantz were at the plant in the morning when the employees were going to work; that they handed out two leaflets; that they were then arrested by a police officer of the City of Holdenville; that they went or were taken from the plant to town where they posted bonds; that at least Sukenis then

went back to the plant to resume her distribution of leaflets and at that time employees "were still going into the plant." (Tr. 46-48).

(17) All of the occasions on which union organizers distributed or undertook to distribute literature to employees were in the morning when the employees were going to work.

(18) All of the occasions on which union organizer's went to the plant to say "Good morning" to the employees when they had no literature to distribute were in the morning when the employees were going to work with the sole exception of September 26, 1953, when Sukenis and Covey went to the plant at noon.

(19) There is no evidence or testimony that the union organizers ever distributed or undertook to distribute literature or greeted or otherwise communicated or attempted to communicate with employees in the afternoon when the employees were leaving work.

(20) There is no evidence or testimony that the union organizers ever attempted to distribute union literature to employees at the entrance to or exit from Respondent's property either in the morning as the employees came to work or in the afternoon as they left the plant property or at any other time.

(21) There is no evidence or testimony in the record with respect to any attempt by the union to hold or conduct organizing meetings of employees or any attempt to communicate with employees at their homes in person or by mail or telephone or otherwise.

(22) There is nothing in the record to support a finding or inference that efforts of the union to distribute union literature to or to communicate with employees off Respondent's property would be unsuccessful or ineffective.

(23) There is no evidence or testimony that the union has attempted to avail itself of the customary means for communicating with Respondent's employees in respect to organization or otherwise.

(24) The burden was on the General Counsel to show,

that non-employee union organizers are or have been unable to contact Respondent's employees off Respondent's property.

(25) The General Counsel did not meet the burden that was and is his to show that non-employee union organizers are or have been unable to contact Respondent's employees off Respondent's property.

(26) The burden was not on Respondent to show the necessity for or to otherwise explain or defend the establishment or enforcement of its no-trespassing rule under which non-employee union organizers were not permitted to enter upon and use its property.

(27) There is nothing in the record to support a finding or inference that the non-employee union organizers were under a "unique handicap" in communicating or attempting to communicate with Respondent's employees or that it was "impossible" or "virtually impossible" for them to have such communication off Respondent's property.

(28) The establishment of its no-trespassing rule and its non-discriminatory enforcement of that rule with respect to non-employee union organizers was and is within Respondent's legal and Constitutional rights and same was not violative of the legal rights of its employees or of the union or its non-employee organizers.

(29) The leaflet distributed by Sukenis and Krantz on July 23, 1953 (G. C. Ex. No. 4), contains the following statements:

"The Southwest ILGWU Delegation Demonstrates Protection of Human Rights and Human Spirit of Seamprufe Workers" (front)

"The Southwest delegation to the recent convention of the ILGWU demonstrate their determination to help Seamprufe's workers secure recognition of the rights and freedom due them as citizens of the U.S.A." (front)

"We need your assistance in the struggle against the industrialists and manufacturers who still carry the germs of human hatred in their breasts."

"Most of these anti-union garment manufacturers came to

these states from all sections of the country. They have settled in McAlester and Holdenville, Oklahoma; bringing with them an old hatred and prejudice which they transplanted and intermixed with a new selfishness, and which encourages them to deny their workers their human rights.

"Yes, Seamprufe, Inc., in McAlester and Holdenville; *** have already succeeded in imprisoning the minds of most of their workers.

"We, the members of the ILGWU who live and function in these states, appeal to you to join us and help us stop these garment manufacturers from continuing to imprison the human spirit of the human beings they employ!" (Third page).

(30) To force Respondent to withhold enforcement of the no-trespassing rule in respect to non-employee organizers under the facts of this case would be to violate its legal and Constitutional rights.

(31) The complaint is without merit and should be dismissed.

IV.

The Trial Examiner erred in overruling and denying each of Respondent's motions to dismiss made at the close of the General Counsel's case in chief and at the close of the evidence.

V.

The Trial Examiner erred in overruling Respondent's objections to and in denying its motion to strike testimony relating to alleged incidents that transpired outside and beyond the six months limitation provision of the Act. (Tr. 97-20, 38).

VI.

The Trial Examiner erred in admitting, taking into account and giving effect to testimony relating to alleged incidents occurring outside of and beyond the six months limitation period provided in the Act. (Tr. 17-20, 38).

VII.

The Trial Examiner erred in admitting General Coun-

sel's Exhibit No. 2, and, in the alternative, if it is finally determined that same was admissible, the Trial Examiner erred in attempting to limit the purposes for which it may be used. (I. R., p. 6, footnote 11, Tr. 8, 86-93).

VIII.

The Trial Examiner erred in holding, in effect, that the burden was on Respondent to show the necessity for and to otherwise defend or justify the establishment and enforcement of that rule.

IX.

The Trial Examiner erred in finding that Respondent contended, contrary to the Examiner's findings, "that since the union has adequate means of communication with its employees outside of company property, the enforcement of its no-solicitation rule does not improperly restrict the employees' rights under Section 7 of the Act" in that Respondent at no time admitted or contended that it had a no-solicitation rule and while Respondent believes that the union has had and now has such adequate means it did not undertake to make such proof for the reason that the burden was on General Counsel to prove that it did not have and does not have such means which General Counsel failed to do. (I. R., p. 8, 1, 25-30).

X.

The Trial Examiner erred in finding and holding, in effect, that Ordinance 413 of the City of Holdenville unlawfully curtailed rights of Respondent's employees. (I. R., p. 8, 1, 15 et seq.).

XI.

The Trial Examiner erred in finding and concluding, in effect, that there is no distinction or difference between the rights of employees to solicit in behalf of the union on their employer's property and the rights of non-employee union organizers to solicit in behalf of the union on the employer's property; and that "To differentiate between employees soliciting on behalf of the union and non-employee union solicitors would be a differentiation not only without substance but in clear defiance of the rationale given by the

Board and the Courts for permitting solicitation," said findings and holdings being contrary to the decisions of the Board and the Courts and contrary to the law. (I. R., p. 9, 1, 1-16).

XII.

The Trial Examiner erred in his construction of Respondent's purpose in citing Maryland Drydock Co. v. NLRB, 183 F 2d 538, in its brief to the Examiner and the effect of the Court's holding therein. (I. R., p. 9, footnote 18).

XIII.

The Trial Examiner erred in his findings and conclusions with respect to Respondent's contentions concerning the furnishing of its property to a union for organizational purposes and in the principle enunciated by him in respect thereto. (I. R., p. 9, 1, 18-27).

XIV.

The Trial Examiner erred in his construction and application of the Board's holding in Livingston Shirt Corporation, 107 NLRB No. 109; generally and particularly wherein he appears to say that the Board's reference to "Solicitation while entering and leaving the premises" means or includes on premises solicitation as well as solicitation at the entrances to and exits from the premises by non-employee solicitors.

XV.

The Trial Examiner erred in not finding and giving effect to the Court's holding in NLRB v. Cities Service Oil Co., 122 F 2d 149 in which it was held that representatives of the certified bargaining agent were entitled to board tankers in carrying out their duties in respect to bargaining and grievance handling but that such representatives were not entitled to solicit union memberships while on board which is directly contrary to the position that the Examiner has undertaken to adopt.

XVI.

The Trial Examiner erred in not taking into account and giving effect to the holding of the Court in Marshall Field

& Company v. NLRB, 200 F 2d 375 which was cited to him in Respondent's brief and which is contrary to the position that he has undertaken to enunciate in his report.

XVII.

The Trial Examiner erred in citing United Aircraft Corp., 67 NLRB 594, 606, in support of the finding and conclusion that "It is virtually impossible to distribute union literature to employees or solicit union memberships off Respondent's property; 12" because in the United case, as appears from footnote 12 of the Report, "it was found that the employees did not stop their ears to receive literature so that 'distribution to these employees is virtually impossible'" which has no application to the facts of the instant case inasmuch as no attempt was made to effect such distribution and it is impossible on the present record to tell whether or not the employees would stop to receive proffered literature.

XVIII.

The following finding and conclusion of the Trial Examiner is not supported by and is contrary to the record and the law,

"It is found, therefore, that the Respondent's rule prohibiting the distribution of union literature and the solicitation of union memberships in and around its parking lot and the employees' entrance, constitutes an unreasonable impediment to the freedom of communication essential to the exercise of its employees' rights of self-organization, and that Respondent's maintenance and enforcement of the rule violated Section 8 (a) (1) of the Act. 19" (I.R., p. 9, 1, 38-44).

XIX.

The findings and conclusions set forth in said Report under the heading "IV. The Remedy", and each of them, are not supported by and are contrary to the law and the evidence.

XX.

The "Conclusions of Law" numbered 3 and 4 are not supported by and are contrary to the law and the evidence.

XXI.

The "Recommendations", and each of them, set forth in

said Report are not supported by and are contrary to the law and the evidence.

PROSKAUER, ROSE, GOETZ & MENDELSON,

MUELLER & MUELLER,

Attorneys for Seamprufe, Inc.

By: HAROLD E. MUELLER.

Decision and Order.

On March 26, 1954, Trial Examiner Henry S. Sahn issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report and the Respondent submitted a supporting brief.¹

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions of the General Counsel and the Respondent, the Respondent's brief, and the entire record in this case, and hereby adopts the Trial Examiner's findings,² conclusions,³ and recommendations⁴ and modifications⁵ noted below.

Order.

Upon the entire record in this case, and pursuant to Section 10 (e) of the National Labor Relations Act, as amended,

¹The Respondent's request for oral argument is hereby denied because the record and the exceptions and brief, in our opinion, adequately present the issues and the positions of the parties.

²In its brief, the Respondent makes the following contentions to support its position that it did not violate Section 8 (a) (1) of the Act, each of which we find lacking in merit: (a) Respondent asserts that it does not have a no-solicitation rule, but has a nondiscriminatory no-trespassing rule. In our opinion, this distinction is one without a difference. For, regardless of how the rule is described, the gravamen of the offense is that the Respondent applies it so as to prohibit the distribution of union literature and solicitation of union memberships by Union representatives on and near the parking lot during non-working time; (b) Respondent points out that, while there is evidence in the record to support the Trial Examiner's finding that in the evening employees depart the plant area without stopping at any point in the vicinity of the plant, there is no evidence that this also occurs in the morning when the employees report to work. In our opinion

the National Labor Relations Board hereby orders that the Respondent, Seamprufe, Inc. (Holdenville Plant), Holdenville, Oklahoma, its officers, agents, successors and assigns, shall:

1: Cease and desist from:

(a) Enforcing its rule prohibiting the distribution of union literature and solicitation of union membership, on and adjacent to its parking lot during the employees' nonworking time, provided, however, that the Respondent may impose reasonable and nondiscriminatory regulations in the interest of plant efficiency and discipline, but not as to deny access to union representatives for the purpose of effecting such distribution or solicitation.

(b) Engaging in any like or related acts or conduct which interferes with, restrains, or coerces its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Ladies' Garment Workers Union, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor

the Trial Examiner has drawn a reasonable inference from the facts. Thus, if the employees are able to engage in this non-stop method of driving in the evening despite the fact that they all finish work and leave at 4:30 p.m., it is very unlikely that they do not follow a similar procedure in the morning when they undoubtedly do not reach the vicinity of the plant at the same time; and (c) the Respondent directs attention to the fact that there is no evidence that the union organizers actually attempted to distribute literature at the plant entrances or exits. However, we do not believe that it was necessary for the organizers to go through the motions of making such an attempt as it is apparent that the nonstop method of driving by the employees would have rendered the effort futile and abortive.

³Monsanto Chemical Company, 108 NLRB No. 151. Although Member Beeson dissented from the majority opinion in that case, he nevertheless now considers himself bound by that decision.

In his Report, the Trial Examiner incorrectly stated that Sona Williams drove to the Respondent's property on three occasions in the fall of 1952, and again on March 5, 1953. The Report is hereby corrected to show that she went to Respondent's property on two occasions prior to March 5, 1953.

The General Counsel excepts to the Trial Examiner's failure to include in the remedy, Conclusions of Law, and Recommendations of the Intermediate Report his finding that the Respondent's rule also prohibited the solicitation of union memberships. We find merit in this exception and the Report is hereby modified accordingly.

organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Rescind immediately its rule prohibiting the distribution of union literature and solicitation of union memberships upon and adjacent to its parking lot during the employees' nonworking time.

(b) Post at its plant at Holdenville, Oklahoma, copies of the notice attached hereto as an appendix.⁶ Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the Respondent or its representatives, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Sixteenth Region, in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C., July 7, 1954.

GUY FARMER,
Chairman,
ABE MURDOCK,
Member,
IVAR H. PETERSON,
Member,
PHILIP RAY RODGERS,
Member,
ALBERT C. BEESOX,
Member,
National Labor Relations Board.

⁶In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

Appendix.

Notice.

To All Employees at the Holdenville Plant Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will cease and desist from enforcing our rule prohibiting the distribution of union literature and solicitation of union memberships on and adjacent to our parking lot during our employees' nonworking hours.

We Will Not engage in any like or related acts or conduct which interferes with, restrains, or coerces our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Ladies' Garment Workers Union, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

We hereby rescind our rule prohibiting the distribution of union literature and solicitation of union memberships on and near our parking lot during nonworking hours of employees, except pursuant to reasonable controls not of such character, however, as to deny full access to union representatives for the purpose of distribution.

SEAMPRUFE, INC. (Holdenville Plant),
(Employer).

Dated..... By.....
..... (Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Transcript of Testimony]

District Courtroom, County Court House, Holdenville, Oklahoma, Tuesday, February 2, 1954.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 a. m.

Before Henry S. Sahm, Esq., Trial Examiner.

Appearances: Willis C. Darby, Jr., Esq., 300 West Vickery, Fort Worth, Texas, appearing as Counsel for the General Counsel; Charles J. Morris, Esq., Mullinax & Wells, 1716 Jackson Street, Dallas 1, Texas, appearing on behalf of the Charging Party; Karl H. Mueller, Esq., and Harold E. Mueller, Esq., 507 Burk Burnett Building, Fort Worth, Texas, appearing on behalf of Respondent.

Mr. Darby: I will ask the reporter to mark as General Counsel's Exhibit 2 for identification a certified record in the municipal court in the City of Holdenville, State of Oklahoma, City of Holdenville versus Irving Krantz and Georgia Sukenis.

(Thereupon, the document above referred to, was marked General Counsel's Exhibit No. 2, for identification.)

Mr. Darby: I offer General Counsel's Exhibit 2 in evidence.

Trial Examiner Sahm: Would you show it to counsel?

Mr. Darby: I have givev him a copy, Mr. Examiner.

Trial Examiner Sahm: ~~Ok~~. I see. Is there any objection?

Mr. Karl Mueller: At this time, Mr. Examiner, the respondent objects to the receipt in evidence of this transcript on the grounds that it is incompetent, irrelevant and immaterial to any issue in the case and no proper predicate has been laid for its introduction or receipt in evidence. We don't question the fact that it is what it purports to be, a certified copy, that is, we don't attack the authenticity of the transcript such as it is.

9 SONA WILLIAMS, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Darby.

Q. By whom are you employed, Mrs. Williams?—A. International Ladies' Garment Workers' Union.

Trial Examiner Salm: Is that in Oklahoma, [Batch]?

The Witness: Yes, it is.

Q. (By Mr. Darby) In what position are you employed?—A. Representative.

Q. Have you had occasion to visit the Seamprufe plant in Holdenville, Oklahoma?—A. Yes, I have.

Q. When was it that you first went there?—A. Well, I don't remember the exact date, but it was sometime in the early fall of '52.

10 Q. What was your purpose of going to the Holdenville plant?—A. To give a leaflet.

Q. Will you tell us what you did when you got there?—A. Well, we went, we were standing at the entrance on it, I mean the entrance of the sidewalk from the parking area which goes to the employees' entrance on the west side of the building.

Q. And who was with you?—A. Frances Beare and Lucy Gentile.

Q. And who are they?—A. They are representatives of the Garment Workers' Union.

Q. (By Mr. Darby) Now, what side of the plant was that on in directions of north, east, south and west?—A. It was on the west.

Q. Were you standing in the dirt or on the sidewalk or what?—A. Well, as I explained, there is a sidewalk running north and south; then it joins the one leading to the entrance of the building and we were standing where it joins on either side of this walk on the dirt.

Q. Now, where had you parked your automobiles?—A. In the parking area.

Q. Did you notice any signs as you came into the parking area at that time?—A. No, I didn't.

11 Q. What did you do after you had given your leaflets out?—A. Got in the car and came home, back to McAlester.

Q. Was it in the morning or the afternoon that you left?—A. In the morning.

Q. Did you have occasion to go back after that?—A. Yes, I don't remember the exact dates, but we went back, I would say, in approximately three or four weeks later, the same three.

Q. (By Mr. Darby). Do you know a person by the name of Irving Krantz?—A. Yes, sir.

Q. Who is he?—A. He is a representative of the International Ladies' Garment Workers' Union.

Q. Did you have occasion to go to the Holdenville plant of Seamprufe in the company of Mr. Krantz?—A. Yes, I did.

Q. When was it that you went with him?—A. On March 5, 1953.

Q. Did you go by automobile?—A. Yes.

12 Q. Where did you park your car?—A. In the parking area.

Q. And that is on which side of the plant?—A. On the west side.

Q. After you parked your car, what did you do?—A. We gave a leaflet in the same place as we had given the first one.

Q. Was it in the morning or evening or noon?—A. Morning.

Q. Did you have occasion to see anyone connected with management on that day?—A. Yes, when all the employees but two, as I remember, had gone in, Mr. Nichols came out.

Q. And who is Mr. Nichols?—A. He is the manager of the plant.

Q. Do you see him in the courtroom?—A. Yes, I do.

Q. Tell us what happened when Mr. Nichols came out?—A. He was talking to Irving Krantz and said, "You are trespassing on company property and you must leave now."

Q. Did you hear this conversation?—A. Yes, I did.

13 Q. Will you continue with the conversation?—A. Then, Irv said "Hello" to Mr. Nichols and remarked something about it being a cold morning, and then he introduced me to Mr. Nichols. Mr. Nichols turned to me and said "Hello." Then he said to Krantz, "You heard what I said. Leave now," and Irv said, "I didn't know that we were on company property," that we would check and see, and Mr. Nichols said he didn't care how much we checked, and he said, "Are you going now or shall I call the cops?" And Irv told him to go ahead and call the cops and then we stood there, I'd say approximately two or three minutes before leaving.

14 Q. Have you returned to the plant since March 4 or 5?—A. Yes, last Friday, just the airport road.

Q. The airport road. What time of day did you go there last Friday?—A. Approximately, it was, I'd say, about five minutes until 3:00-4:00.

Q. Did you observe any people or automobiles either leaving or going into the parking lot at that time?—A. Yes, we did.

Q. How many cars, if any, did you observe going into the parking lot that is on the west side of the plant?—A. Twenty-five, I believe.

Q. Did you make a count of them at that time?—A. Yes, I did.

Q. Did you notice how many occupants were in those cars?—A. There was twenty-nine.

Q. Did you observe where these cars went after they turned into the road leading into the parking area?—A. They went on to the parking area.

Q. Did you observe any cars leaving the parking lot?—A. Yes, when the employees came out, they left the parking lot.

Q. By what means did you observe the cars leaving?—A. All cars on the lot circled around on the north side of the building at the east exit, all except two cars that came out and went in the direction of the airport.

15 Q. Were you able to observe the point where the road that runs east and west on the north side of the plant?—A. Yes.

Q. —joins the public road?—A. Yes.

Q. Tell us what the cars did at that intersection?—A. They just came on out into the old road that leads into the airport road.

Q. Well, did they stop?—A. No, I didn't see any of them stop.

Q. How far apart were these cars that were coming out by that road?—A. Most of the time they were almost bumper to bumper. In cases where—sometimes they weren't so close, maybe just the length of a car.

Q. How many cars did you observe leave by that road?—A. 225.

Q. 225 cars?—A. Let's see. Leaving by this road?

Q. Yes?—A. 80 cars.

Mr. Karl Mueller: Excuse me. May I inquire of counsel what was the 225?

Q. (By Mr. Darby) Was it 225 cars or 225 people?—A. 225, people. That was a misunderstanding on my part. There were 80 cars.

Q. Did you observe whether or not any employees walked away from the plant?—A. No, I didn't see any.

Q. Do you think you would have seen them had any walked away?—A. I do, because I could see both entrances on the east and the west.

Q. Did you see any buses in the vicinity?—A. No, I didn't.

Q. Did you make a notation of how long it took these 80 cars to leave the plant?—A. Yes, I did.

Q. How long did it take?—A. Ten minutes.

Q. Were they scattered throughout the entire ten minutes, the cars, leaving?—A. Yes.

Q. Could you tell us how fast these cars were going as they reached the intersection of the road as it runs along the north side of the plant where that road intersects with the public road that runs along the east side of the plant?—A. When they were so close together, some of them were going around five, five, ten mile an hour, and then where they wasn't so thick, I would say some of them were making 20, all the way from five to twenty.

17. Mr. Karl Mueller: * * * At this time, if we may, Mr. Examiner, we will move to strike all the testimony of the witness with respect to the alleged occurrences in the early fall of 1952 in that all that testimony is incompetent, irrelevant and immaterial to any issue in this proceeding.

Trial Examiner Sahm: Is that because of the statute of limitations?

Mr. Karl Mueller: Yes, falls outside the six-month period specified by the statute; no finding, we submit, in view of the statutory provision, can be made in this proceeding based on that testimony in whole or in part. For that reason we move it all be stricken.

18. Trial Examiner Sahm: Does that complete your motion?

Mr. Karl Mueller: Yes, sir, on that particular phase of the testimony.

Trial Examiner Sahm: Background, of course, can never be the basis for the making of a finding. The Act specifies itself that findings can only be made on substantial evidence. I find, however, that in cases of this type, where there are allegations of a course of conduct, that background is sometimes revealing in the sense of interpreting and explaining events that happened within the statutory period. Then, too, the Examiner likes to feel that in writing his report he can separate the relevant from the irrelevant, and he is also keenly aware and conscious of the fact that any findings he makes can only be based on relevant and material evidence. So for that reason I am going to overrule your objection.

Mr. Karl Mueller: We have an automatic exception, of course.

Trial Examiner Sahm: Yes, as I indicated at the outset, an automatic exception is given on all rulings.

Mr. Karl Mueller: Now, we would address the same motion, if the Examiner please, on the same grounds, to the witness' testimony concerning the alleged occurrences on March 5, 1953. The charge in this case was filed Sep-

tember 17, 1953. The complaint alleges that on or about March 17, 1953, certain things took place as is set out in Paragraphs 5 and 6 of the complaint.

19 It is clear to us that all of these matters and things about which the witness testifies, or has testified, as having occurred on March 5, 1953, fall outside the statutory limitation period. No findings can be made here; we say none of that is germane to the point, and we think that, with due respect to the Examiner's observations, and only by way of further explaining our position, we think that this business of taking these things in for the purposes of background would indicate that the Examiner has the feeling that he can take those things into account, though he can make no direct findings predicated on those things. If they could have no influence on the Examiner's findings and conclusions within the frame work of the complaint itself, of course, there would be no purpose of taking them into account at all, and if they do influence or affect findings, then we think that there is actually the situation of giving, by indirection, what can't be done directly, that is, giving weight and effect to matters and things that clearly fall outside the statutory limitation period. That is just by way of amplifying my motion.

Mr. Darby: Mr. Examiner—

Trial Examiner Sabm: Let me answer that. The spoken word is never as precise as the written word, and evidently I wasn't precise enough in justifying or rather 20 explaining my ruling. In these cases, there are certain imponderables, and intangibles, that an Examiner takes into account in arriving at conclusions. Motivation, for instance, and this background very often will permit an Examiner to interpret, or rather I will put it this way, material which is brought in which is material and relevant; is sometimes ambiguous standing by itself, but in the context of the background, it sometimes is revealing. It sometimes permits interpretation of that material and it sometimes lends itself to explanation of, let us say, the relevant and material.

So that was the basis for the ruling. Now, with respect to your objection as to the events occurring on March 5,

1953, I haven't had an opportunity to study the complaint, and I think that this might be an excellent time for me to do so, and while I am, there will be a five or ten-minute recess.

21 Trial Examiner Sahm: I am going to overrule the objection. Exception is noted.

Cross Examination by Mr. Karl Mueller:

Q. Mrs. Williams, you testified about an Irving Krantz. Where is he?—A. I don't know where Irving is myself at this time.

Q. In March he was employed as an organizer by the union, was he?—A. Yes, he was.

Q. As I understand it, that is your job.—A. Yes?

Q. Full time paid employee of the union?—A. That's right.

Q. And your job is to carry on organizational work for the union?—A. That's right.

Q. And as you understand, that was Irving Krantz' job?—A. Yes, sir.

Q. I believe you testified, Mrs. Williams, that last Friday you were out in the vicinity of this plant.—A. That's right.

Q. I believe you said that you were in your automobile or in an automobile on the airport road out there by the plant property.—A. That's right.

22 Q. Were you parked on the road that runs along the front of the plant or the road that runs down to the airport along the south side of the plant property?—A. On the airport road on the south side of the plant property.

Q. And were you parked near the point at which the private road into the plant property intersects with the airport road, so-called?—A. I was parked between the two roads, the one that goes in marked "Private Property" which is on the west side of the building where the employees enter, between that and the road running north and south on the east side of the plant. I was parked at a point to where I could observe people leaving the plant on the west, going to the parking lot, and also the point where the employees' exit runs into the street running north and south.

Q. Now, this airport road, as I understand it, runs east and west.—A. That's right.

Q. And the road along the front of the property runs north and south.—A. Well, now, I suppose the front is where the employees enter the parking area? Is that what you mean?

Q. I'd call that the back.—A. Is that the back? If you call the front on the east side where personnel enters, administrative offices?

23 Q. Yes, that is what I refer to as the front end of the building.—A. Yes.

Trial Examiner Sahm: Pardon me one moment. Is there a distinction between the entrance at the front and at the rear? Now, do I understand that the rear is the so-called employees' entrance [or the east] or the west side, and on the east side is the front of the building which is the office personnel entrance?

Mr. Karl Mueller: That is substantially correct, Mr. Examiner. As I understand it, most of the employees do enter through the doorway on the west side of the building. Some employees, I am told, do come in through what I have referred to as the front door; that is, some of the production workers. There are hallways leading from the front door back to the factory area, if I may refer to it as such, as distinguished from the office and the cafeteria.

Trial Examiner Sahm: Is that the east side?

Mr. Karl Mueller: Yes.

Q. (By Mr. Karl Mueller) Is that the way you understand it, the way we have described it, Mrs. Williams?—A. Yes.

Q. Now, as I understand it, last Friday you stationed yourself out there on this so-called airport road. It is your understanding that is a public thoroughfare?—A. Yes.

24 Q. And is that also true with respect to the road that runs along what we call the front of the building, that is, north and south of the property?—A. I suppose that is a public thoroughfare, too.

Q. Yes, and this road that intersects with the airport road and runs in a northerly direction along the east side.

of the plant—pardon me—the west side of the plant and then turns at a point somewhat beyond the north side of the plant and proceeds in an easterly direction, that is a private road?—A. That's right.

Q. And this parking area that you have talked about is reached by this private road on company property?—A. That's right.

Q. This was about quitting time in the afternoon, was it, that you went out there on the airport road to observe what happened?—A. Yes, around quitting time.

Q. I believe you indicated that you saw a number of cars proceed along the airport road, turn into the private roadway.—A. That's right.

Q. And proceed in a northerly direction toward the plant and did you observe those cars stop and people from the plant get into those cars and then the cars proceed on around the north end of the building and back into the public road?—A. That's right.

25 Q. There were some cars parked, I assume, on that occasion west of this private roadway and west of the plant?—A. You mean the parking area?

Q. Yes.—A. Yes.

Q. And you saw some employees leave the building and get into their cars and drive away?—A. That's right.

Q. Those are graveled roads, are they not, we have been talking about, the airport road and the road running along the front of the property as well as the private road?—A. That's right.

Q. Well, do I understand your testimony to be that on this occasion that you were out there parked on the airport road, that these people left the plant by driving south along the private road to the point where that private road intersects on the airport road?—A. That's right.

Q. And they would drive past you?—A. No. 26 they didn't drive past me; only one car drove on past me.

Q. Where were you parked with respect to the point where the private road intersects with the airport road? Were you west of that point that is farther toward the airport or farther east of it?—A. I was farther east. I

was near the public road on the east which joins the airport road.

Q. The airport road you have been talking about is the one along the south side of the property that runs in a general westerly direction from the public road in front of the plant?—A. That's right.

Q. Well, when you observed these cars leaving the plant on this occasion that you say you saw 225 people leave in 80 cars, were those cars traveling in a southerly direction along the private road toward the airport road and out that way or, then, did they proceed in a northerly direction and turn east and run alongside the north side of the property, the plant itself, into the roadway that runs along the front of the property?—A. All the cars that came out by this, around the north part of the building and out this 27 exit into this public road on the east, traveled south to the airport road and then proceeded toward Holdenville, the town.

• * * / * * •
Trial Examiner Sahm: I'd like to go over that again if I may. The employees came out of the parking lot into the private road; is that correct?

The Witness: (Nods head.)

Trial Examiner Sahm: They proceeded on that way south on the private road; am I correct?

The Witness: No, north, around the building, north and then east around the building, the north end of the building. They proceeded east to the public road and then on out to the airport road where they turned left.

28. Trial Examiner Sahm: I see. In other words, they practically go around three sides of the building until they come, they go south on the public road where it intersects with the airport road and then they turn left and go in an easterly direction?

The Witness: That's right.

Q. (By Mr. Karl Mueller) Now, is it your testimony, Mrs. Williams, that when these automobiles entered the road

in front of the plant from the private road that runs along north side of the factory building, they were at that point, most of them bumper to bumper!—A. Well, most of the time I'd say they were, yes, sir.

Q. Proceeding very slowly?—A. Some of them, I'd say, about five, oh, I'd say about half of them, just about half were almost bumper to bumper. I couldn't say bumper to bumper, but pretty close.

Q. What we generally understand by that, only a few feet between them.—A. Yes.

Q. That is, there were a line of cars up there and they were proceeding slowly from the public road, I should say from the private road off the plant property into the public road.—A. I'd say they were going anywhere from five to twenty mile an hour. Some of them came out of there when they had a clearance, I'd say, they were doing 29 twenty mile an hour, quite a few of them.

30 Q. Well, I don't want to confuse you. As I understand it, these 80 automobiles all left the plant roadway, the private roadway, came into the road in front of the plant, proceeded in the southerly direction where that road intersects the airport road and headed for town.—A. Yes.

Q. All within ten minutes?—A. That's right.

Q. Anybody with you?—A. Aletha Covey.

Q. Did you count all of the people in these cars as they went speeding past?—A. Yes, I did, as they came into the airport road.

Q. You counted these 225 people in 80 automobiles in ten minutes?—A. That's right.

Q. You did that yourself?—A. I did.

Q. Without any assistance from anybody else?—A. That's right.

Redirect Examination by Mr. Darby.

31 Q. Did you make any kind of written notation while you were marking those?—A. I did.

Q. What kind of notation?—A. On the left hand side of my paper, I had number of cars and on the right hand,

side I had number of people in cars and I also had number of cars entering plant by way of this private road.

Q. Did you notice any fence there at the plant?—A. Fence on the east side in front of the plant running north and south.

Q. And that would be on the side of this public road that runs north and south to the east of it?—A. That's right.

Q. Was there any other fence?—A. No, I didn't see any other.

Q. What kind of fence was it?—A. Just a wire fence, a barb-wire fence.

32 Q. Approximately what time of day was it that you went out to the plant on Friday afternoon?—A. Approximately around ten minutes to 4:00, I believe.

Q. And what time was it that the employees started coming out?—A. About 4:30, 4:31, something like that, maybe a minute or so past, that I noticed the first one.

Trial Examiner Sahm: That is January 29, 1954, isn't it?

Q. (By Mr. Darby) What year was that, '53?—A. Last Friday, the 29th, I believe.

Q. It would be 1954?—A. '54, I am sorry.

Q. (By Mr. Darby) Were there already some cars in the parking lot when you got there?—A. Oh, yes.

Q. And these 30 that you spoke of, they came 33 while they were there, these 30 cars that you saw go into the parking lot?—A. That's right.

Q. Perhaps 30 was the wrong figure that you saw.—A. Cars into the parking lot, twenty-five.

Q. They went in while you were there?—A. That's right.

Q. Now, when these automobiles reached the intersection of the plant; or, rather the road that runs north and south on the east side of the plant and the airport road, did they stop at that point?—A. No, they didn't.

Q. They continued to go?—A. They continued to go. I didn't see one car stop.

Q. Your testimony has been as to the speed at the time they left the private road running east on the north side of the plant where that road intersected the north and south public road; is that correct?—A. That's right.

GEORGIA SUKENIS, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Darby:

36 Q. Mrs. Sukenis, by whom are you employed?—A. International Ladies' Garment Workers' Union.

Q. In what position?—A. Union representative.

Q. Did you have occasion in that capacity to go to the Holdenville plant of Seamprufe, Inc.?—A. Yes, sir.

Q. Do you recall when it was that you first went there?—A. The first time I went to the Holdenville plant was in February. I don't know the exact date, but I was with Sona Williams, and we gave a leaflet. I can't give the leaflet, but it was in February.

Q. Of what year?—A. Of 1953.

Q. Where did you park the automobile that you came in on that day?—A. Parking lot.

Q. In what parking lot is that?—A. It is right in the west entrance where the employees go into the

Q. Into the plant?—A. Uh-huh.

Q. Could we call that the employees' parking lot?—A. Yes.

38 Mr. Karl Mueller: Mr. Examiner, may we interpose an objection to this entire line of questions as being incompetent, irrelevant and immaterial and not within the issues in this case; all this matter concerning something that may have happened in February of 1953, and it certainly falls within the ban of the limitation period provided by the statutes.

Mr. Darby: May the Examiner please, I would like to state one thing; that is not a rule of evidence, it is a statute of limitations. This is evidence. We are not claiming

any unfair labor practice as of that date, because we are banned by the Section 10 B of the Act, but this is evidence as distinguished from an unfair labor practice claim, even though the evidence might have had the charge been timely filed, amounted to unfair labor practice.

Trial Examiner Sahn: That perhaps states in another way the point I was attempting to make that there is a difference between the admissible evidence as such and the probative weight which can be given to that testimony when it is admitted. Your objection is overruled.

Mr. Karl Mueller: I think that is the point at which we meet head-on. We respectfully insist you can't give any weight to it, because, if you do, you obviously nullify the congressional intent expressed in the limitation period provided for in the statute. That is the way we see it. Thank you, sir.

Q. (By Mr. Darby) Mrs. Sukenis, I think you were at the parking lot when you parked your car. What did you do then?—A. We got out and went to the west entrance where the employees go in to hand out leaflets.

Q. In relation to the entrance, where did you stand?—A. The road leading north and south.

Q. Is there a sidewalk there?—A. Yes.

Q. And is the sidewalk running east and west?—A. It is north and south, and the other runs into the east side where the employees go in.

Q. In other words, there is that sidewalk that runs north and south along the west side?—A. It meets the one that goes, where the employees go into the plant.

Q. And then there is one on the east and west from the north and south sidewalk and the east and west goes up to the employees' entrance?—A. Yes.

Q. Now, where did you stand?—A. Stand in the road, just the edge of the walk.

Q. And where in relation to the intersection of these two sidewalks?—A. Well, I was moving around. I didn't.

Q. You didn't stand in the same place all the time?—A. No.

Q. Now, do you recall seeing any signs as you came into the parking lot on that occasion?—A. No, I didn't see any.

Q. Did you have any conversations with any of the employees?—A. No, just good-morning, and the leaflet, handed them a leaflet.

Q. Was that in the morning, afternoon or evening?—A. Pardon?

Q. Was that in the morning, or afternoon?—A. Morning. Very cold.

Q. It was very cold. Did anyone ask you to leave the premises?—A. No.

Q. When was it that you left?—A. After we gave all the leaflets and stayed around a while and then we left.

Q. Did you return to the Seamprufe plant after that trip in February?—A. Yes, sir.

Q. When did you go there the next time?—A. I 41 went May 27.

Q. Of what year?—A. 1953.

Q. And what time of day was that?—A. In the morning.

Q. Were you with anyone?—A. No, sir.

Q. Did you have any leaflets to give out that day?—A. No, sir.

Q. Why did you go?—A. Because I was assigned to go to Holdenville plant, stay two days in Holdenville. In the meantime my father was dying with cancer, and I had been away from Holdenville for about a month, and I wanted the girls to know that I was still around, so I went down that morning and said good-morning.

Q. Now, did you notice any signs that morning as you came to the plant?—A. No, I didn't see any signs.

Q. Where did you park your car?—A. In the parking lot.

Q. After you parked your car, what did you do?—A. Got out of the car.

Mr. Karl Mueller: Excuse me, Mr. Examiner. May we have an objection to this entire line? There isn't anything in the complaint about anything that took place on May 27, 1953. It is incompetent, irrelevant and immaterial.

42 Mr. Darby: May the Examiner please, this is only part of the proof. We are not alleging any unfair labor practice occurred on that particular day.

Trial Examiner Sahm: Well, with that limitation and explanation, I will overrule the objection.

Mr. Darby: I'd like to qualify that, that we are not saying that there was not a rule enforced as of that day which will go to certain paragraphs of the complaint, which we allege was enforced from March 17 on until today; that there was no independent violation other than that. I'd like to make that clear.

Q (By Mr. Darby) What did you do there that day?—A. Just said good-morning and didn't do anything; just left soon after all the employees went into the plant.

Q. Did you have any short conversations with any of the girls?—A. No, I think—no.

Q. After the girls had all gone into the plant, what did you do?—A. Got in the car and went back to Holdenville; had breakfast.

43 Q. Did you again return to the Holdenville plant after this trip you just told us about?—A. Yes, sir.

Q. When was the next time you went out there?—A. July 2, 1953.

Q. Were you with anyone?—A. No, sir.

Q. How did you reach the plant?—A. I went just like I did before, to the south, went to the west entrance, parked in the parking lot.

Q. Did you see any signs that day?—A. No.

Q. Did you have any leaflets with you that day?—A. Yes, sir. The leaflet was seven-hour day, thirty-five hour week leaflet that I gave that day.

Q. (By Mr. Darby) I hand you General Counsel's Exhibit 3 for identification and ask you to tell us what that is, please.—A. Seven-hour day, thirty-five hour week.

Q. Is that the leaflet you spoke of, of giving out 44 on July 2, 1953?—A. Yes, sure was.

Q. (By Mr. Darby) Where did you stand when you gave the leaflet out?—A. At the west entrance just on the road running north and south in front of the plant where the employees go in.

Q. What did you do with the leaflets there?—A. I gave them to the employees.

Q. Was that in the morning or when?—A. In the morning.

45 Q. (By Mr. Darby) Do you know a person by the name of Earl Dean?—A. Yes, sir, I know Earl Dean.

Q. Did you have occasion to see him on that morning?—A. Yes, sir.

Q. Do you know who Earl Dean is?—A. He is the watchman.

Q. At the Seamprufe plant?—A. Yes, sir.

Q. Did you have any conversation with Mr. Earl Dean?—A. Yes, sir, he came out to me and said—

Q. Will you tell us what the conversation was?—A. He came out to me and said, "I'm sorry, but the company doesn't allow no leaflets to be handed out and you have to leave here."

Q. What did you say to Mr. Dean?—A. I said o. k.

Q. What did you do?—A. Stood around.

Q. Then what did you do?—A. Then I left.

Q. By what way did you leave?—A. The same 46 way I came in.

Q. Did you return to the plant after July 2, 1953?

—A. I sure did.

Q. When did you go back after that?—A. About July 23.

Q. Did you have anyone with you on that occasion?—A. I sure did. I had Try Krantz.

Q. Where did you park your car that day?—A. Airport road.

Q. Was that the first time you had parked on the airport road?—A. Yes.

Q. What did you do after you parked on the airport road?—A. We walked to the west entrance to give out our leaflets. We had leaflets that day. And we noticed the police car at the east entrance at the personnel office, so we went up and handed out two leaflets and then came the police car, and he said, "I have two warrants for your arrest." And I said, "What have I done? What have I done?"

47. Q. (By Mr. Darby) What happened that morning?—A. We approached the west entrance; we handed out two leaflets. The city police car was already parked at the east entrance and they drove around and said, "Georgia, we have two warrants for your arrest." I said, "What have I done?" And he said, "You have violated a trespassing ordinance No. 413." I said, "I didn't know you had such an ordinance." They said, "It has just been passed July 21, 1953." So he asked us to go into see Mr. Davis, Chief of Police, and we did.

Q. Don't tell us what happened there, but after you had finished down at the police station, what did you do?—A. Went right back out to the factory.

48 Q. Did you bring the leaflets back out there with you?—A. Sure did.

Q. And what did you do when you got to the factory on that occasion? First, where did you park your car?

A. Parked it by the airport road.

Q. And then what did you do after you had parked your car?—A. We walked to the west entrance and they were still going into the plant, the employees. We gave out some more leaflets.

Q. (By Mr. Darby) Is this the first time or second time you were there that morning at 7:10 or 7:15?—A. This is the second time, about 7:15.

Q. (By Mr. Darby) What happened when you— —A. They came back.

Q. Who came back?—A. Mr. Kyle, the city police.

Q. What happened?—A. Said he didn't have no warrants. "We are arresting you again. You have to go back."

Q. And did you go back to the police station?—A. We went back and give them twenty dollars more a piece, cash.

Q. Was there later a trial?—A. Yes, about—

49 Q. Do you recall when that was?—A. About August 3, I presume.

Q. (By Mr. Darby) I hand you General Counsel's Ex-

hibit 4 for identification and ask you what that is?—A. That is the leaflet we gave out the day we were arrested.

50 Q. (By Mr. Darby) Mrs. Sukenis, the documents that you handed out, the leaflets that you handed out to the employees, did they have any writing in ink on top of them?—A. No, sir.

Q. Mrs. Sukenis, did you again return to the Holdenville plant after the day you were arrested twice?—A. Not after the second time.

Q. I mean did you return later?—A. Oh, yes.

Q. When did you go back the next time?—A. I went back September 26. I went at noon.

Q. Maybe you misunderstand—I think you misunderstood the question. After July 2, rather July 23, when did you go back the next time?—A. After I was arrested?

Q. Yes, on July 23.—A. I went August 27, I went 51 back to the plant.

Q. Were you with anyone on that day?—A. No.

Q. Where did you park your car?—A. I parked it at the airport road.

Q. And what did you do after you parked it there?—A. I walked to the west entrance.

Q. And what did you do there?—A. I was just saying good-morning to the employees.

Q. Did you have any leaflets with you that day?—A. No, sir.

Q. Tell us what happened while you were there talking to the employees.—A. Well, there wasn't no time that Mr. Nichols or anyone came out to warn me or anything, and the police car came and told me I was arrested again and to report to Mr. Davis, so I went in.

Q. Did the policeman take you down or did you—A. I had my car, so I went in my car down and that was about 7:15, and they wanted me to pay a cash bond. I told them no—

Q. Don't tell us what happened at the police station. Did you go back out there that day?—A. No, sir. I couldn't. They wouldn't let me.

Q. After August 27, when you were arrested, did you later go back out to the Holdenville plant of Seamprufe?—A. I sure did.

Q. When was the next time you went out?—A. 52 September 26.

Q. (By Mr. Darby). Who did you go with, if anyone?—A. Aletha Covey.

Q. And where did you park?—A. We parked at 53 the airport road.

Q. And what did you do after you parked your car?—A. We got out of the car and went to the west entrance where the employees were coming out for lunch. There was, I'd say, I'd estimate, about 13 came out and went home for lunch.

Q. Did you have any leaflets or anything like that with you?—A. No, sir.

Q. Did you see anyone other than the employees coming out?—A. Yes, sir.

Q. Who else did you see?—A. Bob Nichols.

Q. When did you see Mr. Nichols?—A. He came out the door and came up to me.

Q. Tell us what he said to you there?—A. He says, "Here you are again, Georgia, smiling, you son-of-a-gun. Get out of here, seat, leave."

Q. What did you say to him?—A. I said, "I want you to meet my co-worker, Aletha Covey."

Q. And what did he say?—A. He said, "Seat, get away from here."

Q. Was there any other conversation between the 54 three of you?—A. No.

Q. What did he do then?—A. He turned around and went back in.

Q. And what did you do, what did you and Aletha Covey do?—A. We walked, slowly, very slowly down to my car. I waited about ten minutes, too, before I started, and then here came Mr. Kyle again. He's always after me. He said, "Well, I am not going to arrest you because you are not trespassing, but you have to—"

Q. Don't tell us what happened with Mr. Kyle. Is he the policeman?—A. He is the policeman.

Q. Have you been back to Seamprufe since that time?—A. Yes, sir.

Q. Passing out leaflets?—A. No, sir.

Q. Have you been on the property since that time?—A. Yes, sir.

Q. When was the last time you were there?—A. October 1, sir.

Q. Where did you park on October 1?—A. Airport road.

Q. What did you do after you had parked there?—A. Walked to the west entrance.

Q. What time of day was this?—A. It was in the morning.

Q. Did you have any leaflets with you that day?—A. No, sir.

Q. What did you do when you got to the west entrance?—A. Said good-morning to the employees.

Q. What happened while you were there?—A. Bob Nichols, the personnel manager, came out.

Q. What did Mr. Nichols say to you, if anything?—A. He said, "Here you are, Georgia. You are asking for trouble, and you are going to get it. Get the hell away from here."

Q. What did you say to Mr. Nichols?—A. I said, "All right" but I waited a while before I left.

* * * * *
Cross Examination by Mr. Karl Mueller.

56 Q. Mrs. Sukenis, as I understand it, you are employed by the International Ladies' Garment Workers' Union.—A. Yes, sir.

Q. And you were so employed on the occasions about which you testified?—A. Yes, sir.

Q. You are not an employee of Seamprufe at Holdenville or anywhere else, are you?—A. No, sir.

Q. And have never been?—A. Never been.

57 ALETHA COVEY, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Darby.

Q. By whom are you employed?—A. International Ladies' Garment Workers' Union.

Q. In what position?—A. As a representative.

Q. Do you know Georgia Sukenis, the young lady who just testified?—A. Yes, I do.

Q. Did you ever have occasion to go to the Seamprufe plant in Holdenville, Oklahoma?—A. Yes, I have.

Q. When did you go?—A. The first time I went there was September 26.

Q. Of what year?—A. In '53.

Q. Were you with anyone?—A. I was with Georgia Sukenis.

Q. How did you go out there?—A. In a car.

Q. And where did you park it?—A. On the airport road.

Q. What did you do after you had parked the car?—A. We strode up to the plant, stood there a while and talked, and Georgia talked to someone in a car. Evidently it was a man coming after his wife. And later the bell rang and two or three girls came out and we spoke to them, and Mr. Nichols, I presume that was he, Georgia said it was, came out and got in a conversation with Georgia.

Q. Did you overhear the conversation?—A. Yes, I did.

Q. Will you tell us what he said?—A. He says, "Here you are, you are trespassing, you son-of-a-gun."

Q. (By Mr. Darby) What did Georgia say to him, if anything?—A. She introduced me to him and he told us to seat and get out.

Q. What did you do after he told you that?—A. Well, we stood there and talked a while and meantime he went back into the plant.

Q. And then what did you do?—A. We talked a while. We didn't want the employees to think he ran us off, so we taken our time and went back to the airport road.

Q. What time of day was this?—A. It was noon.

Q. Did you see anyone when you got to the airport road that day?—A. Yes, we met someone.

Q. Who did you meet?—A. Mr. Kyle. He was the policeman. He said he had come in to pick us up.

Q. Were you in the vicinity of the Seamprufe plant on Friday, January 29, 1954?—A. Yes, I was.

Q. How did you go out there?—A. We went in an automobile of Mrs. Sona Williams.

Q. Where did you stop?—A. One tenth of a mile from the stop sign on the airport road.

Q. Did you have occasion to see any signs while you were out there?—A. Plenty of them.

Q. Did you make any notations as to what you saw on them?—A. Yes, I did.

Q. Do you have that with you?—A. I sure do.

Q. Did you have occasion to see any signs on the south-east corner of the property where the airport road intersects the public road that runs north and south?—A. Uh-huh.

Q. (By Mr. Darby). Would you tell us what signs you saw and what if anything you saw?—A. The first sign, in fact there were three in one, and to the left it said "To Employees' Parking Area" and an arrow under that, and over that—

Q. Which way did the arrow point?—A. Up the airport road.

Q. That would be pointing to the west?—A. Yes. Over that had another sign "Cafeteria and Loading Dock," and in the center of that next one is "No Trespassing On This Property, The William Caplin Plant, Seamprufe, Inc." And the next one next to that is "The William Caplin Plant, Seamprufe, Inc., Administrative and Personnel Offices" and an arrow.

Q. Was there an arrow?—A. An arrow under that pointing back north and over the top of that one is another arrow and has "Shipping Department" pointing back north. All these were in black letters.

Q. These signs you have told us about are all right there on that particular corner?—A. Yes, they are.

Q. Now, did you have occasion to observe the entrance to the employees' parking lot where that road leaves the airport road there on the south of the property?—A. Yes.

Q. Did you observe any signs there?—A. Yes.

Q. What signs did you see there?—A. Well, on the

right side there was a large one, black letters, "One-Way Traffic, Entrance Only. Proceed Straight Ahead and Circle Around Plant to Make Exit From Grounds."

Q. Was that on the right hand side of the entrance road?

A. Right hand side.

Q. Which way were you facing?—A. We were facing west when we copied these.

Q. The entrance road runs north and south, does it not?—A. North and South.

Q. And that would be on the right hand side of the entrance road, you say?—A. Yes, sir.

Q. But facing the plant when it is on the right hand side?—A. Yes, you could be facing the plant if you were facing west in the car.

Q. All right. And what, if anything, was on the other side of the entrance road?—A. Yes, sir, there was two little signs, one slightly larger than the other.

Q. What did they say?—A. In red letters, "No Trespassing On This Property, The William Caplin Plant, Seamprufe, Inc."

Q. Were there any others?—A. Approximately twelve and a half was another sign, small one, in black letters that said "Private Road."

Q. Approximately how far was the intersection of this private entrance road to the parking lot itself?—A. Off from the airport road?

Q. Yes, from the airport road to the parking lot, going back up this entrance road.—A. Oh, I'd say a good football field, the distance of one.

63 Q. (By Mr. Darby) Did you have occasion to view the exit of the employees' exit road that ran from the employees' parking lot where it intersects the road that runs north and south to the east of the plant?

A. Uh-huh, sure.

Q. Did you see any signs there?—A. Yes, I did.

Q. Will you tell us what those signs said?—A. There happened to be three, sir, little signs situated there. On your left is a small sign saying "Private Road" in black letters. On the right is "One-Way" and has an arrow pointing out. And beyond that is "No Trespassing" On

This—“No Trespassing, The William Caplin Plant, Seamprufe, Inc.”

64. Q. (By Mr. Darby) Did you see any signs on the east side of the plant near the area that leads to the entrance of the administrative offices?—A. Yes, quite a few small ones, “Do Not Enter,” “Do Not Enter,” here and there and a large one, “Administrative And Personnel Parking Area.”

Q. Did you notice any fences out there?—A. Yes, there is one fence.

Q. And where is it located?—A. It runs there on the east side down to the airport road.

Q. Does it have any openings in it?—A. There at the plant and up at the road.

Q. What kind of fence is it?—A. It is like a plain old wire fence.

Q. What time was it that you got out there to the plant on?—A. I didn't have a watch on, so I'd say it was around 4:00 o'clock.

Trial Examiner Sahm: That was the second time on January 29?

65. The Witness: Uh-huh, yes.

Q. (By Mr. Darby) Did you have occasion to see whether any cars went in or out while you were there?—A. Yes.

Q. Where were you located while you were watching cars going in and out?—A. Probably one tenth of a mile from the first sign.

Q. All right. What sign would that be?—A. That was the three corner signs.

Q. Approximately?—A. Up at this end.

Q. What road were you on?—A. Airport road.

Q. You were on the airport road?—A. Uh-huh.

Q. Do you know approximately how far it is there at the airport road to the northeast exit road from the employees' parking lot where the northeast exit road intersects the road that runs north and south, the public road?—A. Approximately two tenths of a mile.

Q. Now, how many cars did you see going into the employees' parking lot while you were there on that Friday afternoon?—A. Twenty-five.

Q. Did you see any cars leave by that way?—A. Yes, sir.

Q. How many?—A. Seventy-eight left that way.

66 Q. Now, do you mean the seventy-eight cars came out of the parking lot the same way that the twenty-five had gone in?—A. I won't say all the twenty-five went in that way. Some of them were divided and went in as they should go in, the entrance, but there were two made an exit from the entrance and went west toward the airport.

Q. The two cars that made an exit, did they leave the company property and go directly on to the airport road?

—A. Yes, sir.

Q. And they left by what is known as the entrance on the south side?—A. That's right.

Q. Two of the cars did and they turned west toward the airport?—A. That's right.

Q. Now, where did the other cars come out?—A. They came out on the, from the exit up on the northeast corner and came out south and all turned toward Holdenville.

Q. Did you observe at what speed these cars were going as they came out of the plant or the company property?—A. From the exit, I'd say about five and ten mile an hour.

Q. Approximately how far apart were they?—A. Bumper to bumper. On many occasions, you know, as they strangled out, there would be approximately a car length between them.

Q. Were any of these closer than that together?

67 A. Yes, sir, when they were rushing out there.

Q. Did you notice whether any of these cars stopped on the public road?—A. None of them did. They kept going.

Q. Did you have occasion to count the number of people that were in the cars?—A. Yes, I did.

Q. How many people were in them?—A. 225.

Q. Did you make any notes at that time?—A. Sure did.

Q. Do you have those notes with you?—A. Sure do.

Q. Did you see any buses out there?—A. No, I didn't.

Q. Did you see any taxi cabs?—A. I seen one taxi cab in the vicinity, but it was empty when it came that way and

evidently didn't pick up a fare because it was empty when it went back.

Q. Approximately how long did it take for these cars to leave after they first began leaving the property?—A. I'd say around, oh, ten minutes.

Q. Did you have occasion to see whether or not there was a stop sign at the exit of the parking lot where the exit road intersects the ~~road~~ running north and situated in front of the plant?—A. I didn't see any.

68 Trial Examiner Sahm: That is private road, isn't it?

Mr. Darby: Yes, sir, I understand it is a private road. I don't know whether it has a stop sign or not. I wanted the record to show whether it did or not.

Q. (By Mr. Darby) Had there been a stop sign there, do you think you would have seen it?—A. Certainly.

* * * * *
Cross Examination by Mr. Karl Mueller.

70 Q. Yes, ma'am. Now, the first sign was at the southeast corner of the property right there at the corner of the fence, wasn't it?—A. Yes.

Q. And then you proceeded from that point in a westerly direction along the airport road about a tenth of a mile before you stopped and parked?—A. We parked facing the east when we counted.

Q. You went down, then, I suppose, and turned around, did you not?—A. Turned around, yes.

Q. And came back to a point a tenth of a mile west of the southeast corner of the plant property?—A. Right.

Q. You measured that on the speedometer of the car, didn't you, so you would be able to testify with accuracy?—A. Yes.

71 Q. Now, during the entire time that you were parked there on that occasion; your car was parked on the airport road facing toward the east?—A. Right.

Q. I believe your testimony was that twenty-five cars drove into the private road off of the airport road.—A. That's right.

Q. Did all of them pass you traveling in a westerly direction on the airport road and then turn to their right into the private road where it leads up to the entrance or, rather, the employees' parking lot or did some come from the other direction traveling in an easterly direction toward where you were parking or parked?—A. Well, when we first parked, we parked up beyond the entrance and we watched them come in that way. Then we moved down.

Q. Oh, you shifted your position while you were there?—A. Certainly.

72 Q. The first place you parked, as I understand it, was on the airport road somewhere west of the intersection of the private road and the airport road.—A. That's right.

Q. So that you could observe that intersection.—A. That's right.

Q. You were at that time parked so that you were faced in an easterly direction?—A. That's right.

Q. And you stayed there until you had observed 73 the twenty-five cars go in?—A. That's right.

Q. You couldn't observe what was going on up at the northeast corner of the plant property, could you?—A. Not where we were parked first. That's why we parked down closer so we could observe.

Q. And the point at which you parked the second time was the point that was one tenth of a mile?—A. That's right.

Q. West on the airport road from the southeast corner of the plant property?—A. That's right.

Q. Now, is it your testimony that seventy-eight cars left the plant property via the private road up near the northeast corner of the plant property?—A. That's right.

Q. And those cars then turned to their right so as to travel in a southerly direction along the public road that runs along the front side of the plant property?—A. That's right.

Q. And at your vantage point a tenth of a mile away, you counted the people in each of those cars as they left?—A. That's right.

Q. And you found 225 people in 78 cars; is that right?

A. Well, we had two more cars that went out west.

Q. When was it that you got out there, do you recall?

A. Around 4:00 o'clock.

Q. Yes. And you left about when, do you recall?—A. About fifteen until 5:00, because we stayed there a little while after they had all left. In fact, there were about six cars still left on the parking lot at the employees' entrance.

Q. Did you count the number of cars on the parking lot while you were out there waiting for something to happen?—A. No, I didn't.

Q. You are employed as an organizer by the union,
75 are you not?—A. Yes, sir.

Q. Have you ever been employed by Seamprufe at the Holdenville plant?—A. No, sir.

Q. How long had you been an organizer for the union prior to this occasion on September 26, 1953, when you and Georgia went out to the Holdenville plant?—A. September 14 or 15; if that fell on Monday, it was, that's when I was first hired.

Q. And you had been employed in that company,
76 or in that capacity continuously since then?—A. That's right.

Q. As a full-time job?—A. It is a full-time job.

Redirect Examination by Mr. Darby.

Q. When you parked on the airport road when you observed these automobiles leaving the plant, were you closer to the public road that ran north and south on the east side of the plant or were you closer to the private road on the west side of the plant that led to the employees' parking lot?—A. We were closer to the public road.

Q. From the place where you were parked, could you observe the private road that runs into the north and south public road at the northeast corner of the property?—A. Yes, we could.

Recross Examination by Mr. Karl Mueller.

Q. How far away was that point from where you were sitting, this point where you saw the cars coming out from the north side of the plant?—A. To the exit?

Q. Yes, ma'am; where you saw the seventy-eight cars come out. You didn't clock that on your speedometer?—A. Sure did.

Q. Did you?—A. Two tenths of a mile.

Q. Two tenths of a mile. Now, I assume by the testimony that you have just given that the distance you are describing you measured when you left that northeast corner up there and drove down the public road to the southeast corner, turned and went in a westerly direction to the point at which you were parked; is that right?—A. I started clocking there at the southeast corner and clocked to the exit.

Q. Oh, You started at the southeast corner and 78 drove up the public road from that point to the point at which the private road intersects?—A. That's right.

Q. With the public road. And that's two tenths of a mile?—A. It is.

Q. I see. And then you were parked a tenth of a mile west of that corner?—A. I was.

Q. I see.

Trial Examiner Sähni: That makes that block—is it a block? It's hard for me to visualize. I have never been out there, of course. That makes the frontage of that property where the block is on the south side then three tenths of a mile according to her testimony; am I correct?

Mr. Karl Mueller: No, I don't think you are, Mr. Examiner. Actually it is acreage. Isn't as developed as city property in blocks.

The Witness: It is sitting out in a corn field.

Mr. Karl Mueller: There are twenty-five acres.

Mr. Morris: If counsel has a plat, I think maybe we could save a lot of confusion if we had perhaps introduced the

plat a little bit earlier, and testified with reference to it.

Trial Examiner Sahm: Yes, it would have been a help to me. It would have helped me considerably, although I have a rough draft here which I am trying to follow myself. Very well. Any further questions?

Mr. Darby: I am going to ask the reporter to mark as General Counsel's Exhibit 5 a plat.

81. Mr. Karl Mueller: Without any intention of interfering, if you would like to offer, we will stipulate with you that it does correctly reflect the facts as they exist in the ground out there. That was prepared by an engineer and surveyor for the company.

Mr. Darby: I will offer General Counsel's Exhibit 5 and so stipulate that it shows what it purports to show, and at this time I would like to ask that I be allowed to withdraw the original and return it to the respondent and have two photostats remain in evidence, and the reporter, I understand, will take care of that part for me.

Further Redirect Examination by Mr. Darby.

Q. Now, Mrs. Covey, will you show me the plant that you pointed out? Will you point out the airport road? Now, will you take a pencil and make a mark on the airport road where you were when you observed the cars leaving at the northeast road?—A. Approximately right here.

82. Trial Examiner Sahm: Suppose you mark that with the letter "X". The witness is marking on General Counsel's Exhibit No. 5 the letter "X" in answer to that last question.

Further Recross Examination by Mr. Karl Mueller.

Q. Now, referring to General Counsel's Exhibit 5, you have marked an "X" on that plat which is west of the southeast corner of the plant property, is it not?—A. Yes, it is.

Q. And that's the point that was a tenth of a mile west of the southeast corner of the plant property?—A. Yes.

Trial Examiner Sahm: Just one question I want to ask you. You testified, did you not, that you saw twenty-five cars coming into this lot?

The Witness: Yes, sir.

Trial Examiner Sahm: Now, what time of the day was that?

The Witness: It was around fifteen after 4:00.

Trial Examiner Sahm: And then how long after that did you observe the approximate 78 cars coming out?

83 The Witness: Well, we started clocking them, and I imagine that they clocked out of work about 4:30, just the same as we do at McAlester.

Mr. Darby: I don't know why they were there, but I assume they came to pick people up getting off from work. I don't know anybody that does know.

Trial Examiner Sahm: The first thought that came to my mind, is there another shift coming to work at that time?

Mr. Darby: There is only one shift so far as I know. Could we have a stipulation to that effect, if that is correct?

Mr. Karl Mueller: Just one shift; that is right.

84. Q. (By Mr. Karl Mueller) While you were out there casing that part of the country for signs—I didn't mean any disrespect; I mean observing, did you happen to see that little sign off there to the left as you are going west on the airport road? It's on the property right across the airport road from the plant property, a little sign in red, and it reads, "Private Road, Keep Out," and that road runs off toward one of the hangars there on the airport property. Did you observe that?—A. Yes, I observed that.

Q. Did you notice whether or not the no trespassing sign up there near the northeast corner of the plant property had

the same legend on it, the same wording, the same color lettering as was situated down there by the private road off the airport road?—A. ⁸¹ I observed that this afternoon and yesterday, I mean Friday, but I didn't believe that was, the Seamprufe property out there on the airport road.

Q. Oh, excuse me. I am talking about another sign. I am not talking about the little sign across from our property where it says "Private Road, Keep Out." That isn't our property and isn't our sign. I was back now to asking you about the no trespassing signs that were lettered in red over on our property. There is one just off the airport road, is there not, near the south boundary line of the plant property. You told us about that, what it says, you read that:

85 "No Trespassing On This Property, The William Caplin Plant, Seamprufe, Inc." Is that right?—A. That is right.

Q. Now, isn't the lettering on the no trespassing sign up by the northeast corner where the private road intersects with the public road that runs in front of the plant, isn't that the same sign, doesn't it say exactly the same thing, painted in red, "No Trespassing On This Property, The William Caplin Plant, Seamprufe, Inc."?—A. I don't know, because I didn't have it in red letters down there, but I did copy the same—it is the same wording, still read the same way.

Mr. Darby: At this time I would like to offer General Counsel's Exhibit 2 and General Counsel's Exhibit 4 in evidence. General Counsel's Exhibit 2 is the court record that is signed by the court reporter of that proceeding, and General Counsel's Exhibit 4 is the leaflet that was passed out on July 2 or July 23, I am not sure.

Trial Examiner Sahm: Well, first, General Counsel's Exhibit No. 2 is what purports to be a transcript of testimony from the municipal court of the City of Holdenville, State of Oklahoma. Is there any objection to that?

86 Mr. Mueller?

Mr. Karl Mueller: We make the same objection that we made this morning. It's incompetent, irrelevant and immaterial.

terial to any issue in the case, no proper predicate has been laid for its introduction or receipt in evidence. It involves a proceeding to which the company was not a party. It appears to cover proceedings had in connection with a proceeding in the municipal court brought by the city.

Trial Examiner Sahm: The company was the prosecutor, were they not?

Mr. Karl Mueller: Beg pardon?

Trial Examiner Sahm: Was not the company the prosecutor in the sense that they swore out the warrants?

Mr. Karl Mueller: Oh, no, sir; all those records are right next door to us in the clerk's office here. The proceedings apparently were for an alleged violation of Ordinance No. 413 as brought by the police officers of the city, the arrest made under warrant issued by the corporation judge, municipal judge, the case was presented by the city attorney in behalf of the city, all of which would become apparent if we made the entire record in the proceeding a part of the record here; and that goes to another ground of our objection. The transcript is fragmentary and incomplete. If, we think, if the entire record were made a part of this record that what was said and done there would be in no sense binding upon the respondent, and that no findings or conclusions could be made therefrom or based thereon in connection with this proceeding.

Trial Examiner Sahm: Would you object to the admission of this exhibit if its use was to be limited merely to showing that the parties were arrested?

Mr. Darby: I don't offer it for that purpose, Mr. Examiner.

Trial Examiner Sahm: I know you don't. But I can't limit you in any way which you offer it. I just want to find out Mr. Mueller's theory here, understand the argument.

Mr. Karl Mueller: Well, I don't know that that in and of itself would constitute competent evidence of the arrest. I think the witness has testified that she was arrested. And from what I saw in the clerk's office yesterday for the first time, there is a warrant there that as a part of the papers on

appeal, the defendant in that proceeding, as the record would indicate, offered no evidence or testimony in their own behalf, were found guilty and appealed to the county court of Hughes County, and that is where we saw the warrant that appears to be a part of the official papers in four cases that are on appeal.

The warrant contains, I think, in either case, contains a return which indicates that an arrest was made. Frankly, we don't know. We have no reason to question that, but we can stipulate, I think, that the warrants issued in those cases by the municipal judge have returns on them indicating that the persons for whom they were issued were arrested.

88 Trial Examiner Salm: Do I understand that these warrants were issued on the information of the judge here?

Mr. Karl Mueller: No, it is my information that Mr. Davis is Chief of Police in Holdenville; isn't that right?

Mr. Bob Nichols: Yes.

Mr. Karl Mueller: And the complaints in each case appear to have been sworn out by the Chief of Police and warrant issued by the Municipal Judge based presumably on the complaint, and then the warrants executed, I think, in each case; I could be mistaken, but my recollection is that Officer Kyle, police officer of the City of Holdenville, served the warrants and made the arrests.

Trial Examiner Salm: I'd like to hear your position on that.

Mr. Darby: May the Examiner please, the document is offered to show certain admissions on the part of respondent's employees, particularly Mr. Nichols, the personnel manager. For instance, I would like to refer you to page 8 thereof, the third question, and they are referring there to July 23, "Were the policemen called at your instruction?" And Mr. Nichols' answer is "Yes".

Mr. Karl Mueller: That is an odd way to make that character of proof. Mr. Nichols is in the hearing room. We will stipulate, as far as that goes, there isn't any secret about it at all, we found trespassers on our property and

89 they declined to leave, as the record now shows with abundant clarity, and management had one of the persons summon the officers. What the officers did from there on, of course, was a matter of their official conduct and none of ours.

93 Trial Examiner Sahm: It is your contention, as a substantive matter of law, that the respondent had no right to post his property or to put it another way, to prevent the union representatives from coming onto their property to distribute union literature.

Mr. Darby: That is exactly my contention, that when they did, they violated Section 8 (a) (1) of the National Labor Relations Act when they made that rule.

Trial Examiner Sahm: Not notwithstanding any ordinance of the city to the contrary?

Mr. Darby: Not notwithstanding any number of ordinances.

Trial Examiner Sahm: Well, since General Counsel's Exhibit No. 2 has been offered and objection has been made, I am going to reserve ruling on it. I will dispose of it in my intermediate report.

98 Mr. Darby: It is hereby stipulated and agreed that during the calendar year 1953, the Seamprufe Holdenville plant employed approximately 200 employees, of which two thirds resided in Holdenville, the remaining one third residing in communities around Holdenville, the majority of this remaining one third living within communities within five and ten miles of Holdenville, the remaining and few exception living up to a distance of thirty miles from Holdenville.

Mr. Karl Mueller: We so stipulate.

99 In a discussion off-the-record here, the counsel for the respondent stated that his answer or its answer admits the jurisdictional averments of the complaint, and the facts stated therein, and also the averment in the com-

plaint to the effect that the charging union is a union within the meaning of the Act. Am I correct in that, Mr. Mueller?

Mr. Karl Mueller: You are, Mr. Examiner.

Trial Examiner Sahm: Very well, it will be so stipulated in the record.

100 Mr. Karl Mueller: Yes, sir. At this time the respondent moves to dismiss the complaint insofar as it alleges the Commission of unfair labor practices of the respondent for the reasons that said allegations are not supported by substantial evidence, the General Counsel not having met the burden that is his with respect thereto.

Trial Examiner Sahm: The motion is denied. Exception noted.

Mr. Karl Mueller: Respondent now moves to dismiss each of the allegations set forth in Paragraph No. 5 of the complaint for the reason that said allegations are not supported by substantial evidence.

Trial Examiner Sahm: Motion denied. Exception noted.

101 Mr. Karl Mueller: Thank you, sir.

Respondent respectfully moves the Examiner to dismiss Paragraph No. 5 of the complaint for the reason that if the allegations therein contained are true, which is not admitted, same would not constitute a violation of the National Labor Relations Act as amended under the undisputed evidence of the case.

Trial Examiner Sahm: *** The motion is denied. Exception noted.

Mr. Karl Mueller: Yes, we are familiar with it on a general way.

Respondent now moves the Examiner to dismiss the allegations, and each of them, set forth in Paragraph No. 6 of the complaint for the reason that said allegations are not supported by substantial evidence.

102 Trial Examiner Sahm: Motion denied. Exception noted.

Mr. Karl Mueller: Respondent now moves the Examiner to dismiss the allegations, and each of them, set out in Paragraph No. 7 of the complaint as to each of the dates therein alleged, to wit, August 27, September 25 and September 30, 1953, as to, one, distributing literature, two, soliciting union membership, three, soliciting union authorization, severally, if we may, for the reason that one of said allegations is supported by substantial evidence.

Trial Examiner Sahm: Motion denied. Exception noted.

Mr. Karl Mueller: Respondent now moves the Examiner to dismiss the allegations set out in Paragraph No. 8 of the complaint wherein it is alleged in substance that on or about July 2, 1953, the respondent by and through Earl Dean attempted to prevent union officials from distributing union literature for the reasons that said allegation is not supported by substantial evidence.

Trial Examiner Sahm: Motion denied. Exception noted.

Mr. Karl Mueller: We make that same motion, if we may, so as to save time and record with respect to July 23 and August 27, 1953.

Trial Examiner Sahm: Motion denied. Exception noted.

Mr. Karl Mueller: And if we may, in this fashion, make the same motion with respect to each of the three dates alleged insofar as it relates to the solicitation of union membership and as to the solicitation of union authorization, all as is set out in Paragraph No. 8 of the complaint so as to obviate the necessity of making the same motion as to each offense as to each alleged offense under each case.

103 Trial Examiner Sahm: Very well. Same ruling.

Mr. Karl Mueller: The respondent also respectfully moves the Examiner to dismiss the allegations and each of them set out in Paragraph No. 10 in the complaint as to each of the two dates therein set out insofar as each relates to Robert Nichols and Earl Dean, severally, for the reason that said allegations are not supported by substantial evidence.

Trial Examiner Sahm: Motion denied. Exception noted.

Mr. Karl Mueller: Respondent also respectfully moves

the Examiner to dismiss the allegations and each of them set out in Paragraphs Nos. 11, 12 and 13 of the complaint, respectfully, for the reason that said allegations are not supported by substantial evidence.

• Trial Examiner Sahm: Motion denied. Exception is noted.

104 Mr. Karl Mueller: Mr. Examiner, it is stipulated and agreed by and between counsel in this proceeding that Ordinance No. 413 of the City of Holdenville, Oklahoma, passed and approved July 21, 1953, reads as follows:

"An ordinance defining trespass, providing the penalties therefor, and declaring an emergency;

"Be it ordained by the mayor and councilmen of the City of Holdenville, Oklahoma, in regular session assembled:

"Section 1. Trespass, as used in this ordinance, shall include going upon, or occupying any public or private property or entrances thereto without the express or implied consent of the owner, lessee or custodian.

"Section 2. It shall be an offense for any person to trespass upon, or enter upon any public or private property, within the City of Holdenville, Oklahoma, against the wishes or consent of the owner, lessee, custodian, or the person rightfully in possession thereof.

"Section 3. Any person convicted of the offense of trespass as defined herein, shall, upon conviction, be fined in any sum, including cost, or not to exceed \$20.00, but, each day such offense may be committed shall constitute a separate offense.

"Section 4. All ordinances, or parts thereof, in conflict herewith are hereby repealed.

"Section 5. By reason of public peace, health and safety of the inhabitants of the City of Holdenville, Oklahoma, an emergency is hereby declared to exist, by reason 105 whereof, this ordinance shall be in full force and effect from and after its passage, approval and publication.

"Passed and approved, this, the 21st day of July, 1953.

Trial Examiner Sahm: Is that stipulation agreeable to you?

Mr. Darby: So stipulated. I would like, with the reservation that by stipulation we don't deem that the contents of the ordinance are relevant. Our proposition in that respect was that it was the company who caused the arrest, whatever it caused the arrest under.

Mr. Karl Mueller: As the result of our off-the-record discussion, Mr. Examiner, may we propose the following stipulation.

It is hereby stipulated and agreed by and between the attorneys for the parties in this proceeding, in the event the transcript proffered by General Counsel as his Exhibit No. 2 is received in evidence; that in each of the four cases tried on August 3, 1953, the proceedings in that respect being set out in General Counsel's Exhibit 2 for identification, the complaint was made in writing by Mr. Davis, Chief of Police of the City of Holdenville, and that in each of those cases, a warrant based on the complaint was issued by Mr. Beasley, the Municipal Judge of the City of Holdenville.

106 Trial Examiner Sahm: Very well. Is that agreeable?

Mr. Darby: It is so stipulated.

Mr. Karl Mueller: No; we would prefer to submit a brief if we may. Before we leave the record, may we at this time renew each of the motions that we made at the conclusion of the General Counsel's case in chief?

Trial Examiner Sahm: Very well. And the same ruling.

111 (Whereupon, at 3:45 o'clock p. m., the hearing in the above-entitled matter was closed.)

General Counsel's Exhibits

[General Counsel's exhibit 1-A, charge against employer, is printed at page 56]

[General Counsel's exhibit 1-D, complaint, is printed a page 6.]

[General Counsel's exhibit 1-F, answer, is printed a page 9.]

General Counsel's Exhibit 2.

In the Municipal Court of the city of Holdenville, State of Oklahoma. City of Holdenville, Plaintiff, vs. Irving Krantz and Georgia Sukenis.Appealed to County Court No. 4515

Before: The Honorable W. G. Beasley, Justice of the Peace in and for Holdenville District.

Date: August 3, 1953.

Appearances: C. H. Baskin, City Attorney, Holdenville, Oklahoma. Charles J. Morris, of the firm of Mullinax & Wells, Attorneys-at-law, 1716 Jackson Street, Dallas 1, Texas; and Gene Stipes, Attorney-at-law, McAlester, Oklahoma; representing the Defendants.

Transcript of Testimony.

Charles J. Morris, attorney for the Defense, speaks "Judge, I respectfully ask leave to be allowed to try this case in your Court—in this Oklahoma Court."

C. H. Baskin: I think he should be extended the courtesy. I move that he be allowed to try this case.

The Mayor: I second the motion.

The Judge: Allowed.

Whereupon, the witnesses are sworn.

RE E. NICHOLS takes the stand to testify.

Direct Examination by C. H. Baskin, City Attorney.

Q. Are you connected with the *Seamproof* company here at Holdenville, the plant here at Holdenville?—A. Yes, sir.

Q. In what capacity?—A. Plant manager.

Q. As plant manager, do you have charge of the plant here at Holdenville?—A. Yes, sir.

Q. Is Earl Dean connected with your plant?—A. Yes, he is.

Q. Do you know the two (2) defendants here (indicates the defendants), by face, if not by name?—A. Yes, sir.

Q. Have you seen them on the premises of *Seamproof*, Incorporated, recently?—A. Yes, sir.

(Here a discussion is had, as to whether the two charges made against the defendants might be consolidated; and the decision was reached. Mr. Baskin made the stipulation):

"It is stipulated, that the charges of *tresspassing* filed against the defendants on July 25th and the charge filed on July 30th, are consolidated for the purpose of this trial."

Q. Mr. Nichols, the two defendants, Mr. Krantz and Mrs. Sukenis, had been around your plant; had they, prior to July 25th?—A. Oh, yes.

Q. State whether or not you had requested them not to come about your place?—A. They had been given to understand that they were *tresspassing*, and had been asked to get off the property.

Q. Do you have a lease?—A. Yes, we do.

Q. And that lease is of record?—A. Yes, it is.

Q. And were they on that property that you leased from the city?—A. Yes, sir.

Cross Examination by Charles J. Morris.

Q. Now you testified on direct examination that some conversation that you had, I believe you said on July 23rd, with the two defendants—were they on the *Seamproof* property?—A. Yes, sir.

Q. Did you have any conversation with them at that time?

A. Just a brief word or two.

Q. What was that brief word or two?—A. I don't remember the exact words.

Q. What was that in substance?—A. Possibly, "You are

trespassing", or something like that, and I turned to the policeman—

Q. Were the policemen there?—A. Yes, sir.

Q. Had you called them?—A. No.

Q. Were the policemen called at your instruction?—A. Yes.

Q. Were they called that day?—A. I don't know.

Q. Did you instruct them to call that day?—A. No, I did not. I gave instructions earlier—they may have called that morning.

Q. When did you give those instructions—that day?—A. No.

Q. Now, did you have any other conversation with the defendants before July 23rd?—A. Once before.

Q. When was that?—A. Once before in the area, somewhere.

Q. Who was present that time?—A. Just myself.

Q. And both defendants?—A. No, just Mr. Krantz.

Q. What did you tell him?—A. That he was trespassing, and asked him to get off.

Q. Those were the only two occasions that you talked with the defendants?—A. That's right.

Another witness for the plaintiff municipality, EARL DEAN, takes the stand.

Direct Examination by C. H. Baskin.

Q. State your name to the Court.—A. What's that?

Q. What is your name?—A. Earl Dean.

Q. Are you an employee of *Seamproof*, Incorporated?—A. Yes, sir.

Q. And were you, before July 24th, this year?—A. Yes, sir.

Q. Do you know the defendants, here—Mr. Krantz and Mrs. Sukenis?—A. I know them more by seeing them than I do by name.

Q. Have you seen them on the *Seamproof* premises, on the 24th and 30th of July?—A. I would say 23rd and 24th—generally on Thursday—23rd and 24th, and I would say the 30th.

Q. Did you talk to them?—A. I talked to them on the 23rd.

Q. Did you ask them to leave the premises?—A. Yes, sir.

Morris: I object to the questions as leading.

Q. (Baskin). What did you say?—A. I told them that the orders were given to me that no one should trespass, that since the orders were given to me that way they would have to leave.

Q. Did you call the police?—A. I told them to leave, and I called the police.

Q. When were you so instructed to ask them to leave?—A. I would say sixty days or more.

Q. Were you instructed each day?—A. No I didn't, but I had seen them and asked them to leave—I was told to ask them to leave, "anybody that you may see—anybody carrying papers—grocerymen putting out bills—any kind of bills, ask them to leave". He said that, to ask them to leave.

Q. Who is "he"?—A. Mr. Hayden. The man that gave me the instructions.

Q. When you got your instructions from Mr. Hayden about trespassing, did he say anything about where people were standing?—A. He said they should get off of their lease—it goes out where the road goes up to the airport, which is 150 or 200 yards away, he said they had no lease out there and it was none of their business who was out there or what they did.

Q. In other words, Mr. Dean, Mr. Hayden told you that these union representatives should not be allowed to pass out their bills on company property, is that right?—A. What he told me, he said any grocery boy, any insurance man of any kind, with circulars of any kind, whatever, or anybody not working there, to ask them to leave. He didn't say any special persons. There had been a *grocer* store boy handing out circulars. They were asked to leave.

Q. Did you call the police to ask them to leave?—A. They generally came out there at evening when I was not there. He said that the women had their cars parked there.

and that we would be responsible if anything happened to be misplaced.

Q. He didn't say anything about Unions?—A. No, sir. He didn't say anything about any special persons.

Q. You still say he didn't say anything about the Unions?—A. No, the only thing he said was about handing out circulars—he said the people were not to put papers in the women's road, where they come out to work.

Another Witness, ROY COOK, the City Mayor, takes the stand, having been sworn.

Direct Examination by Mr. Baskin.

Q. Your name is Roy Cook?—A. Yes, sir.

Q. What official capacity do you hold in Holdenville?—A. Mayor.

Q. (Morris) Mr. Cook, if these two people were picked up, did you have a conversation with Georgia Sukinis, here (motions to her)?—A. After they were picked up?

Q. Was it you who talked to them?—A. She and this other fellow came in and talked with Earl Roberts—

Q. Could you name the substance of that conversation?—A. They seemed to think that they had been treated dirty, and he told them that we didn't want them to bother the *Seamproof*.

Q. (Baskin) Now, what would that have to do with either convicting or clearing these people?

Morris: Rephrase the question, please.

A little discussion was had off the record.

Morris: Would that signify why the ordinance was passed?

A. (Cook) Yes.

Q. What did you tell them was the reason?—A. To keep anybody from trespassing.

Q. At this plant?—A. Yes.

Q. Did you tell them that? You told them why this was done?—A. No, I don't know as I said why. I told them that we didn't want them messing our *Seamproof* up. I said

something about the law, and I said, "You will have to talk to our City Attorney".

Q. Did he write the Ordinance?—A. I suppose he did.

Q. Did you request that he write the Ordinance?—A. Well, the City Attorney and myself talked about getting this Ordinance, and he wrote one and we passed it.

Q. You told him you wanted an ordinance to keep people from trespassing at the *Seamproof*?—A. Well, that's what we wanted to do.

Baskin: We didn't say Union, we said "anybody".

Morris: I didn't say anything about the Union.

(Resumes questioning.)

Q. If I understood your answer, the purpose of this Ordinance when you talked to the City Attorney, was to keep people from trespassing out at the *Seamproof*?—A. Well, any of the City Property.

Q. What other property did you mean?—A. Well—that's what we meant.

Certificate of Reporter.

I, Martha H. Rogers, the duly appointed and acting County Court Reporter of Hughes County, Oklahoma, do certify that I was engaged to take the testimony and proceedings in the above and foregoing Municipal hearing, before the Honorable Judge Beasley, Justice of the Peace of Holdenville District, Holdenville, Oklahoma; and that I took in shorthand all the testimony and proceeding had and heard on August 3, 1953; and that I thereafter reduced my shorthand notes to longhand, and that the above and foregoing is a true, correct and complete transcript to the best of my knowledge and belief.

Witness my hand this 20th day of August, 1953.

MARTHA H. ROGERS,

County Court Reporter.

General Counsel's Exhibit 3.

dictated by: M.P.

June 3, 1953

July 2, 1935—Thursday—Holdenville.

Today 8 Hours

Tomorrow 7 Hours

Seven Hour Day
Thirty-five Hour Week.

At the National Convention of the International Ladies' Garment Worker's Union, held recently in Chicago, a resolution was unanimously adopted by the representatives of 450,000 garment workers for the introduction of the seven-hour work day and thirty-five hour work week (from Monday to Friday inclusive) in all shops of the women's garment industry.

In the Cloak and in the Silk Dress trade; and in a number of other branches of the women's garment industry, the workers have been enjoying the seven hour day and thirty-five hour week for some years. Now the time has come when the thirty-five hour work week should—and will—be extended to all other branches and shops in the garment industry.

At the Seamprufe plants in McAlester and Holdenville, Oklahoma, and in all of the shops in the states of Texas, Arkansas, etc., the top wages most workers are receiving for forty hours are very low. These workers will therefore have to receive general cost of living wage increases, plus the thirty-five hour work week.

The garment workers who will soon go on a seven-hour day or thirty-five hour week, (and that applies to workers employed on women's garments everywhere in the United States as well as in the Dominion of Canada) must receive for the thirty-five hours—pay amounting to: not less than the pay they have previously received for forty-hours work.

In relation with the shorter work week, those of the workers who will soon enjoy the thirty-five hour week should do some thinking of the people who were the first to go on the picket lines for the thirty-five hour work week. Those were

the New York Waist Makers; followed later by New York, Philadelphia, Chicago, Cleveland cloakmakers and dressmakers; and still later by Boston, St. Louis, and other cloak and dressmakers.

Now—over forty years later, all other workers employed in the women's garment industry are set to establish and enjoy the seven-hour day, the thirty-five hour week in all shops of the women's garment industry.

Why a Thirty-Five Hour Week?

The result of a shorter work week is a longer life. People—workers—began enjoying a longer span of life because of the shorter work day and the shorter work week.

To continue expanding our span of life, the seven-hour work day and thirty-five hour work week should be established in the entire women's garment industry, and later, in other industries as well.

Employers in general, and particularly non-union employers, do not like the idea of a shorter work week, but the happy results the shorter work day and shorter work week bring to the workers and their families and to the people in general, must and should be the determining factor in the situation.

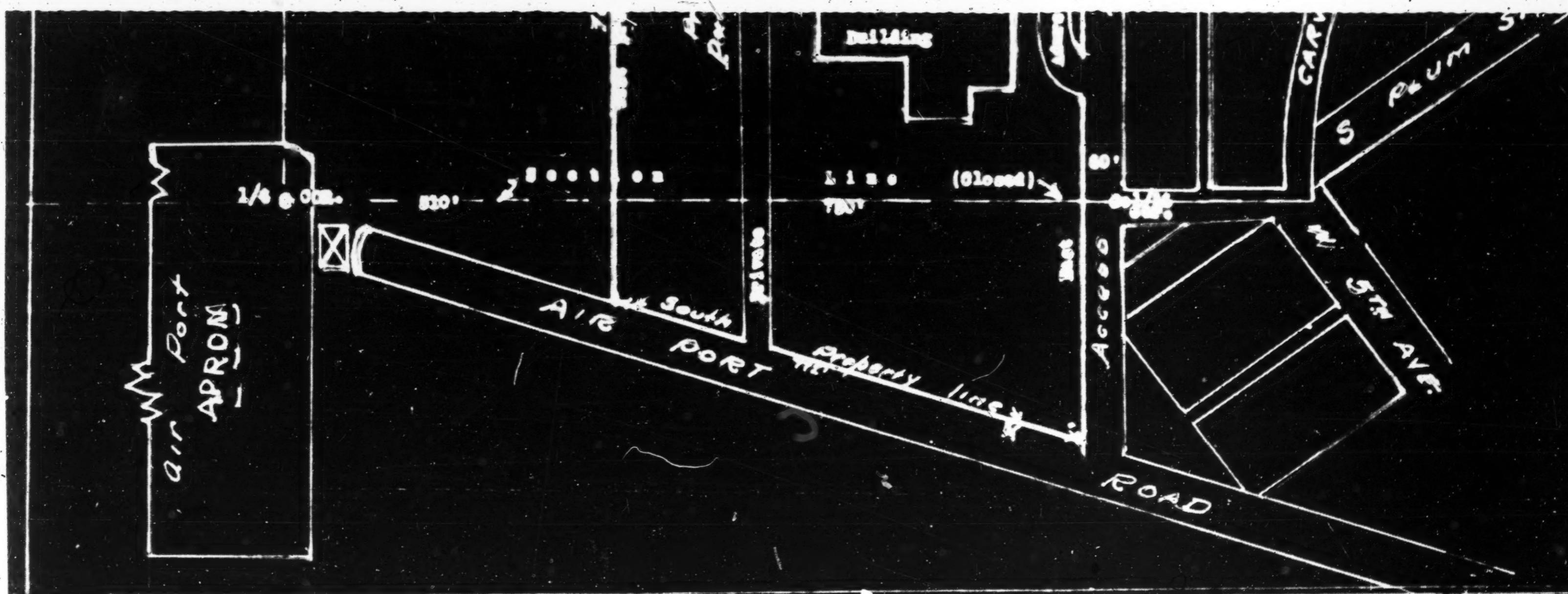
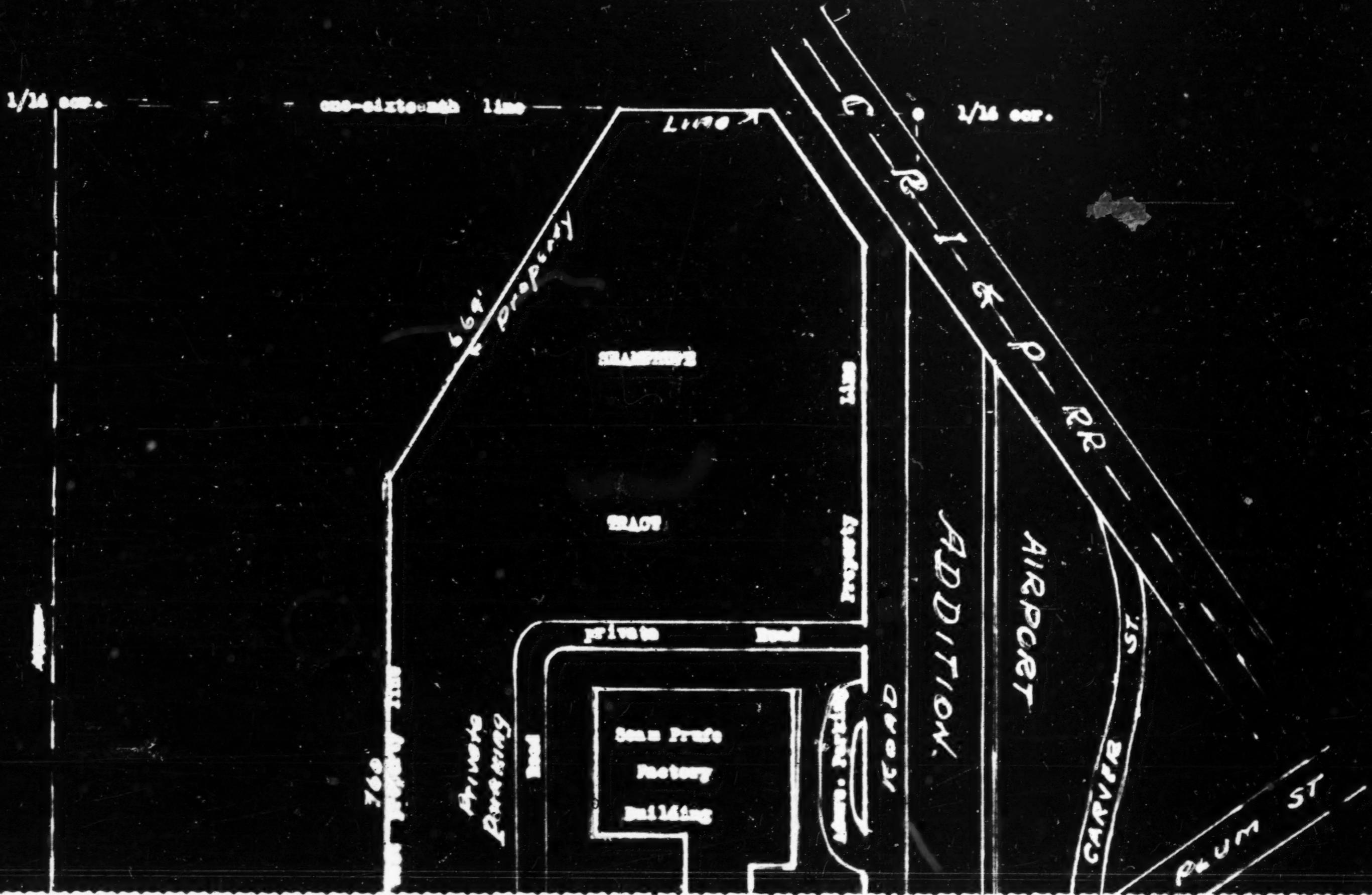
Southwestern Regional Office
International Ladies' Garment Workers' Union
American Federation of Labor

National Office—I.L.G.W.U., 1710 Broadway, New York, N.Y.
Southwest Regional Office, 110 North 9th, St. Louis, Mo.

PLAT. +

General Counsel's Exhibit 5

PA 54 SE Sec 12 & 14 1/2 NW NE Sec 13. T 3 N R 8 E S 54 E



The above and foregoing is a true and correct plat of the Sam Pruitt Tract (City of Holdenville, Oklahoma) the same being situated in a part of the Southwest quarter ($\frac{1}{4}$) of the Southeast quarter ($\frac{1}{4}$) of Section Twelve and a part of the Fort one-half ($\frac{1}{2}$) of the Northwest quarter ($\frac{1}{4}$) of the Northeast quarter ($\frac{1}{4}$) of Section Thirteen ($\frac{1}{2}$), Township Seven (7) North Range Eight (8) East Lincoln County Oklahoma, and it accurately shows the location of the buildings upon the said premises and also the location of Private Roads upon the same,

Witness my hand and seal this the 29th. day of August 1953.

Franklin.
W. W. Palmer, County Surveyor.

635

General Counsel's Exhibit 4

THE SOUTHWEST ILGWU DELEGATION DEMONSTRATES FOR PROTECTION OF HUMAN RIGHTS AND HUMAN SPIRIT OF SEAMPRUFE WORKERS



The Southwest delegation to the recent convention of the ILGWU demonstrate their determination to help Seamprufe's workers secure recognition of the rights and freedom due them as citizens of the U. S. A. The group followed the delegation of Local 384, McAlester, Oklahoma. MONA WALKER, golden voice from OKLAHOMA, is singing a song of freedom.

THE HARDSHIPS OF SEAMPRUFE, INC. WORKERS AT THE CONVENTION OF THE ILGWU . . .

**MUSIC, TEARS, AND DEMONSTRATION STARTED THE
SESSION ON WEDNESDAY, MAY 20, 1953.**

President David Dubinsky opens the session with the following statement:

"We have the Southwest department waiting! Instead of my telling you their troubles, I will let the director of this department speak to you in his own way. The director, whom you all know well, has given many years of devoted service to organize thousands and thousands of workers. He has fought many battles.

The manufacturers can't defeat Meyer Perlstein. He might lose an NLRB election and even a strike, but you can be sure that he will not give up anything he undertakes. That is one of the reasons he is to make the report. He is involved in a serious battle. I am glad we are able to give him inspiration and encouragement. I now present Vice Pres. Meyer Perlstein."

Vice President Perlstein comes up to the platform and addresses the convention. He states, pointing a finger to the Southwest group . . .

"Here come the garment workers, members of the ILGWU from the states of Missouri, Oklahoma, Kansas, Arkansas, Texas, Minnesota, and from sections of the states of Nebraska, Tennessee, Kentucky, Indiana, and Southern Illinois.

Here they come carrying with them their state emblem and marching to the tunes of their state songs. They are coming to greet you and express to you their respect and appreciation for the assistance you have given them in their struggle to secure improvements—which the great majority of the garment workers in most sections of the Southwest now enjoy.

Your assistance and cooperation enabled them to establish economic and social standards similar to those enjoyed by their fellow members of the ILGWU in the old established garment centers in the East and other sections. In cultural development, they have set the pace by increasing the knowledge of the officers, as well as, the members of the union in the Southwest.

Yes, with your assistance, the men and women of these young states have established higher wage standards, paid holidays and annual paid vacations. The Health Centers in our region have provided health and medical benefits and health preservation. For the aged workers in our midst, we have established

retirement funds which are built on a broad collective basis of one fund for all our members of all our industries in every center. The retirement funds are about to begin providing rest and a little leisure for those who have aged in the service of the women's garment industries in these areas.

Here, marching forward, come the 125 convention delegates, representing the ILGWU membership in the union shops of the towns and villages of those young and energetic states; saying to you, 'We need your assistance in the struggle against the industrialists and manufacturers who still carry the germs of human hatred in their breasts.'

Most of these anti-union garment manufacturers came to these states from all sections of the country. They have settled in McAlester and Holdenville, Oklahoma; in Dallas and other towns, bringing with them the old hatred and prejudices which they transplanted and intermixed with a new selfishness; and which encourages them to deny their workers their human rights.

Yes, *Seamprufe, Inc., in McAlester and Holdenville*; The Lorches, the Donovans, the Marcey-Lees, and others, in Dallas and other parts of the state of Texas, have already succeeded in imprisoning the minds of most of their workers.

We, the members of the ILGWU who live and function in these states, appeal to you to join us and help us stop these garment manufacturers from continuing to imprison the human spirit of the human beings they employ!

We need your support in our efforts to break down the iron gate these garment manufacturers have built around the minds of their workers. We must give the workers in *Seamprufe, Inc.*; the workers in *Dallas*, the opportunity to join our ranks—the ranks of the organized labor movement in America—the ranks of the I.L.G.W.U., so that they, together with the rest of us, can join the legions of progressive humanity who are struggling to continue marching forward to a more enjoyable life for ALL humanity . . . a life built on a foundation of spiritual and intellectual creativeness and real human greatness."

Southwest Regional Office

INTERNATIONAL LADIES' GARMENT WORKERS' UNION

A. F. of L.

110 N. 9th

St. Louis, Mo.

National I.L.G.W.U. Office

1710 Broadway

New York, N. Y.

Certificate of the National Labor Relations Board.

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, "In the Matter of Seampurfe, Inc. (Holdenville Plant) and International Ladies' Garment Workers Union, AFL," Case No. 16-CA-677 before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Order designating Henry S. Sahm Trial Examiner for the National Labor Relations Board, dated February 2, 1954.
2. Stenographic transcript of testimony taken before Trial Examiner Henry S. Sahm on February 2, 1954, together with all exhibits introduced at the hearing.
3. Copy of Trial Examiner's Intermediate Report and Recommended Order dated March 26, 1954 (annexed to Item 9 hereof); Order transferring case to the Board dated March 26, 1954, together with affidavit of service and United States Post Office return receipts thereof.
4. Respondent's telegram dated April 13, 1954, requesting extension of time to file exceptions and brief.
5. Copy of Board's telegram dated April 14, 1954, to all parties granting extension of time to file exceptions and briefs.
6. Respondent's letter dated April 27, 1954, containing request for oral argument. (Denied, page 1, footnote 1 of the Board's Decision and Order).
7. General Counsel's exceptions to Intermediate Report received April 9, 1954.
8. Respondent's exceptions to Intermediate Report received April 28, 1954.

9. Copy of Decision and Order issued by the National Labor Relations Board on July 7, 1954, with Intermediate Report and Recommended Order annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 13th day of October, 1954.

FRANK M. KLEILER
Executive Secretary.

(Seal)

NATIONAL LABOR RELATIONS BOARD.

Filed United States Court of Appeals, Tenth Circuit,
October 16, 1954, Robert B. Cartwright, Clerk.

[97]

[Caption omitted]

[98]

Minute entry of argument and submission—
March 15, 1955

(Omitted in printing)

99

In United States Court of Appeals
Tenth Circuit

No. 4996—NOVEMBER TERM, 1954

NATIONAL LABOR RELATIONS BOARD, Petitioner

vs.

SEAMPRUFE, INC. (HOLDENVILLE PLANT),
RespondentOn Petition for Enforcement of an Order of The National Labor
Relations BoardRuth V. Reel (David P. Findling, Assoc. General Counsel,
Marcel Mallet-Prevost, Asst. General Counsel, and Fannie M.
Boyls were with her on the brief) for PetitionerKarl H. Mueller (Howard Lichtenstein and Harold E. Mueller
were with him on the brief) for Respondent

Before BRATTON, HUXMAN and MURRAH, Circuit Judges.

Opinion—May 4, 1955

MURRAH, Circuit Judge.

This is a petition to enforce an order of the National Labor Relations Board directing Seamprufe, Inc. to cease and desist from prohibiting the use of its private parking lot and adjacent area by non-employee union organizers for distribution of union literature and solicitation of Seamprufe's employees to union membership during the employees' non-working hours, on the ground that such prohibition constituted an unfair labor practice under Section 8 (a) (1) of the National

Labor Relations Act, as amended, 61 Stat. 136, 29 U. S. C. A. § 151 et seq., 158 (a) (1):

Seamprufe operates a manufacturing plant located on the outskirts of Holdenville, Oklahoma, a town of approximately 6000 residents. It employs approximately 200 persons on a one-shift basis. Two-thirds of the employees live in Holdenville, and one-third within a radius of from five to thirty miles from the city. None of the employees are represented by a union for collective bargaining purposes.

Late in 1952, representatives of the International Ladies' Garment Workers' Union, AFL, began contacting Seamprufe's employees before and after working hours, on the private parking area provided by Seamprufe for the use of its employees and upon the private sidewalk leading to the rear entrance of the plant. There they greeted the employees and sometimes distributed union literature. After the inception of these visits, Seamprufe posted "No Trespassing" and "Private Road" signs on its premises, and consistently warned the union representatives that they were trespassing on company property and that they must leave the premises. After the Holdenville City Council enacted an ordinance forbidding anyone from going upon private property without the owner's consent under penalty of fine, the union organizers were removed by the city police and arrested for trespassing.

The employees ride to and from work in privately owned automobiles, either singly or in groups. They approach the plant from the east along the public road on the south side of the plant premises. They enter company property driving north on a one-way company-owned road, and park their cars on the company parking facilities at the rear of the plant. After parking their cars the employees walk to the rear entrance of the plant on the private sidewalk connecting with the private road.

101 On leaving the plant after work, the employees proceed by direction from the parking area driving northeasterly on the private road to the public road intersection along the east side of the plant, turn south onto that road and continue thereon to the intersection with the public road bounding the plant premises on the south, where they turn left toward Holdenville. There are no stop signs at either intersection, and the Board affirmed the trial examiner's findings that the employees normally do not stop at any point in the vicinity of the plant except in the parking area because the plant is located in a semi-rural area and the traffic is light. There was testimony to the effect that at the close of work on a typical day in January, 1954, 80 cars containing 225 employees left the parking lot at about a

car length apart and at speeds varying from five to twenty-five miles per hour; that approximately ten minutes after cars first began to leave the lot, the entire caravan had departed from the plant area.

Following the rationale of *N. L. R. B. v. Le Tourneau Co.*, 324 U. S. 793, and succeeding cases, *N. L. R. B. v. Caldwell Furniture Co.*, 199 F. 2d 267 (4th Cir.) cert. denied, 345 U. S. 907; *N. L. R. B. v. American Furnace Co.*, 158 F. 2d 376 (7th Cir.); *N. L. R. B. v. Illinois Tool Works*, 153 F. 2d 811 (7th Cir.), the Board found that the enforcement of Seamprufe's no-trespass rule was unnecessary to the maintenance of plant production and discipline; and further that the nonstop method of driving to and from the plant area made it virtually impossible for union representatives to communicate with employees off Seamprufe's property. It therefore concluded that the enforcement of the non-discriminatory rule deprived the employees of their guaranteed right to self-organization constituting an unfair labor practice under Section 8 (a) (1) of the National Labor Relations Act.

The Le Tourneau case and those which followed it were concerned with the balancing of the guaranteed right of the employees to self-organization against the correlative right 102 of the employer to maintain plant production and discipline. In arriving at this balance, the court in the Le Tourneau case very properly concluded that the right of the employees to distribute union literature and solicit employees upon company property was paramount to a no-solicitation rule in the absence of a showing that the enforcement of the rule was essential to the maintenance of plant production and discipline. And no such showing having been made, the court concluded that the enforcement of the company rule constituted an unfair labor practice.

The rationale of the Le Tourneau case was extended to the solicitation of employees by non-employees in a "working area used occasionally by employees and customers" in *Marshall Field & Co. v. N. L. R. B.*, (7 Cir.) 200 F. 2d 375. But the latter court refused to extend the doctrine to non-employee organizers or solicitors in employees' restaurants and cafeterias in the absence of a showing that by virtue of the isolated character of their employment and residence, the employees were uniquely handicapped in the matter of self-organization and concerted activity. See *N. L. R. B. v. Lake Superior Lumber Corp.*, 167 F. 2d 147.

Calling our attention to the fact that no right of an employee to solicit other employees on company property is involved here, but only the right of a non-employee to go upon company property in violation of a non-discriminatory no-trespass rule. Seamprufe

earnestly contends that the rationale of the Le Tourneau case is wholly inapplicable to our facts; that our case rather falls within that part of the Marshall Fields case which denied non-employees access to company property in the absence of a showing of restricted accessibility amounting to a handicap.

As we have seen, the fundamental basis for permitting the solicitation of union membership on company property is to ~~guarantee~~ vouchsafe the guaranteed right of self-organization. N. L. R. B. v. Le Tourneau, *supra*. When conducted by employees the solicitation amounts to the exercise of a right subject 103 only to the correlative right of the employer to maintain plant production and discipline. An employee on company property exercising the right of self-organization does not violate a company no-trespass rule. N. L. R. B. v. Monarch Tool Co. (6 Cir.) 210 F. 2d 183. But a non-employee labor organizer who comes upon company property in violation of a non-discriminatory no-trespass rule can justify his presence there only insofar as it bears a cogent relationship to the exercise of the employees' guaranteed right of self-organization.

Here the union which the non-employee solicitors represented was not the bargaining agent for the employees. Cf. N. L. R. B. v. Monarch Tool Co., *supra*. Indeed the employees did not belong to any union, and the solicitors were therefore strangers to the right of self-organization, absent a showing of non-accessibility amounting to a handicap to self-organization.

The Board found special circumstances of inaccessibility. But we do not think that conclusion is legally justified by the facts. True, the union organizers could not contact the employees at the entrance or exit to the company property, but these circumstances did not insulate the employees from the union organizers. Unlike the employees of a lumber or mining camp who live and work on company property isolated from outside contacts, as in N. L. R. B. v. Lake Superior Lumber Corp., *supra*, the employees here lived in or near a small city and were easily accessible to union solicitors. There was no impediment to union solicitation off company property amounting to a deprivation of the right of self-organization.

The no-trespass rule was non-discriminatory. There is no showing of antiunion discrimination as in N. L. R. B. v. Stowe Spinning Co., 336 U. S. 226 and Bonwit Teller, Inc. v. N. L. R. B. (2 Cir.) 197 F. 2d 640, and its enforcement did not constitute an unfair labor practice.

The enforcement of the Board's order is therefore denied.

104 In United States Court of Appeals for the
Tenth CircuitOne Hundred Seventh Day, November Term, Wednesday,
May 4, 1955Before Honorable SAM G. BRATTON, Honorable WALTER A.
HUXMAN and Honorable ALFRED P. MURRAY, Circuit Judges

Judgment—May 4, 1955

This cause came on to be heard on the transcript of the record from the National Labor Relations Board and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the petition for enforcement of the Board's order be and the same is hereby denied.

105 [Clerk's Certificate to foregoing transcript omitted
in printing]106 SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1955

No. 251

~~Order allowing certiorari. Filed October 10, 1955~~

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.